TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1912.

No. 207.

SILAS A. GILSON, APPELLANT

vs.

THE UNITED STATES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

FILED MARCH 6, 1913.

(23,082)

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a United States Circuit Court of Appeals for the Ninth Circuit.

No. 1800.

SILAS A. GILSON, Appellant,
vs.
THE UNITED STATES OF AMERICA, Appellee.

PRINTED TRANSCRIPT OF RECORD.

Upon Appeal from the United States Circuit Court for the Eastern District of Washington, Southern Division.

Filed Jan. 15, 1910. Frank D. Monckton, Clerk.

1 [*Names of Attorneys of Record.*]

A. G. Avery, Esquire, Solicitor for Complainant and Respondent.
Frank A. Luse, Esquire, Allen S. Davis, Esquire, Solicitors for Defendant and Appellant.

United States Circuit Court, Eastern District of Washington, Southern Division.

UNITED STATES OF AMERICA, Complainant,
against
SILAS A. GILSON, Defendant.

Bill of Complaint.

To the Honorable Judges of the Circuit Court of the United States, Ninth Circuit, Eastern District of Washington:

Comes now the United States of America, by A. G. Avery, United States Attorney for the Eastern District of Washington, acting under the direction and by the authority of the Attorney General of the United States, and brings this, its bill, against Silas A. Gilson, a citizen and resident of the State of Washington, and of the Eastern District of Washington, and for cause of complaint against said defendant complains and says:

One.

2 That on or about November 13, 1899, and for many years prior thereto, complainant was the owner of the following described lands, to wit: The east one-half of the northwest quarter, and the northeast quarter of the southwest quarter of section twenty (20), township fourteen (14) north, range nineteen (19) E. W. M., the same being situate in Yakima County, State of

Washington, and subject to entry and disposal at the United States Land Office at North Yakima, in said county and State.

Two.

That said lands and premises on, to wit, said 13th day of November, 1899, were, and for many years prior thereto, had been surveyed public lands of the United States, and during all of said times had been and were subject to entry and settlement under the homestead laws of the United States.

Three.

That on or about November 13, 1899, one Daniel Landis, pretending to be desirous of availing himself of the provisions of the laws of the United States relating to the entry of public lands for homesteads and the disposal of such lands under such entry, and with the knowledge and consent and connivance of the defendant Silas A. Gilson herein and at said Gilson's procurement and instigation, and for the purpose of procuring the lands of the complainant, unlawfully and fraudulently signed and caused to be filed in the said land office at North Yakima a written application in the form provided by the regulations of the General Land Office of the United States to enter under section 2289 of the Revised Statutes of the United States the lands and premises hereinbefore described,
3 and, with said written application, filed in said land office an affidavit signed and sworn to by him, the said Daniel Landis, before the register of said land office in which said affidavit, the said Daniel Landis swore and made oath in substance, among other things, that said application was honestly and in good faith made for the purpose of actual settlement and cultivation, and not for the benefit of another person or persons, and that he would faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence and cultivation necessary to acquire title to said land, and that he was not acting as the agent of any person, corporation or syndicate in making such entry, nor in collusion with any person, corporation or syndicate to give them the benefit of the land entered or any part thereof or the timber thereon, and that he did not apply to enter same for the purpose of speculation but in good faith to obtain a home for himself, and that he had not directly or indirectly made, and would not make, any agreement or contract in any way or manner with any person or persons, corporation or syndicate by which the title which he might acquire from complainant should inure in whole or in part to the benefit of any person except himself.

Four.

That each and all of the said averments and declarations herein set forth and in said affidavit and application contained were, as the said Landis then and there knew, false and fraudulent, and particularly because in truth and in fact the said Landis did not make

said application honestly or in good faith or for the purpose
4 of actual settlement and cultivation, and that said application and entry was for the purpose of another person, to wit, the defendant herein, Silas A. Gilson, and that the said Landis did not, when said application was made and when said affidavit was sworn to, intend to faithfully or honestly endeavor to comply with any of the requirements of law as to settlement, residence and cultivation necessary to acquire title to the land applied for, and that said Landis was then and there acting in collusion with the defendant, Silas A. Gilson, for the purpose of giving him the benefit of the land entered and the timber thereon, and that said Landis did make said application and affidavit and said entry for the purpose of speculation and not in good faith to obtain a home for himself, and that said Landis had at that time made an agreement with the defendant Silas A. Gilson wherein the latter was to have the benefit of said application and entry.

Five.

That the said Landis had not, when he made the application and affidavit to enter said land as aforesaid, established his residence on said land, and has not done so since making said application.

Six.

That thereafter and on the day last aforesaid, the said Landis, to further perfect his alleged entry, did pay to the receiver of said land office at North Yakima the amount due on said entry.

Seven.

That thereafter, and on or about October 15, 1902, the said Landis filed in said land office notice of his intention to make
5 final proof on said homestead application on November 21, 1902, as required by law, which notice was published in accordance with the rules and regulations of the land office and the law in such cases made and provided, and on said November 21, 1902, the said Landis, for the purpose of commuting his alleged homestead entry in the manner provided by law made and subscribed to an affidavit filed in said proceedings wherein, among other things, he stated and declared that he made settlement upon said land on the 13th day of November, 1899, and that since said date he had built a house on said land and had continued to reside thereon up to the time of making said affidavit, and that he had broken about thirteen acres of said land and cultivated three acres thereof, and that no part of said land had been alienated except as provided in section 2288 of the Revised Statutes of the United States, and that he was sole and bona fide owner thereof as an actual settler. That said affidavit was subscribed and sworn to by the said Landis before the register of said land office at North Yakima. That all of said averments referred to herein, and contained in said affidavit, as said Landis then and there well knew, were false and fraudulent, that is to say, the said Landis did not, as stated in said affidavit, or

at all, make settlement on said land on the 13th day of November, 1899, or any other time, nor did he build a house thereon, except a partly completed shanty which was scarcely habitable, and the value of which did not exceed the sum of —— dollars; that the said Landis had not, at said time, continuously resided upon
6 said land as stated in said affidavit, or at all, and he had not, as in said affidavit stated, cultivated three acres, or any other portion thereof, nor had he broken thirteen acres, or any other portion thereof, and at the time of making said affidavit the said Landis had alienated, or agreed to alienate, said land to the defendant Silas A. Gilson, herein, and that he was not then or at any time the sole or bona fide owner of said land as an actual settler or otherwise.

Eight.

That thereafter, and on or about the 21st day of November, 1902, for the purpose of presenting to the Register of said land office further evidence and proof of his right of commutation in respect to his said entry of said land, he submitted and filed in said land office his affidavit subscribed and sworn to before the Register of said land office, wherein, among other things he averred and declared that he settled upon said land and established his residence thereon on November 13, 1899, and that he had resided continuously on said land ever since, and during said time made his home thereon, which averments and declarations, and each and every one of them, were false and fraudulent and known by the said Landis to be false and fraudulent at the time they were made, and that said Landis did not reside continuously upon said land since November 13, 1899, or at any other time, or at all, except an occasional visit thereto. That in said affidavit the said Landis averred and declared that he had cultivated about three acres of said land for three seasons, when in truth and in fact he
7 had not cultivated three acres, or any portion, of said land for three seasons or for any time. That in said affidavit he averred and declared that he had not sold, conveyed, or mortgaged any portion of said land, when in truth and in fact at the time of making said affidavit he had sold said land.

Nine.

That on said last-named day, for the purpose of perfecting his final proof, the said Landis made and subscribed, before the Register of said land office, an affidavit filed therein, wherein, among other things, he averred and declared that he had made actual settlement upon and had cultivated and resided on said land since the 13th day of November, 1899, and up to the time of making said affidavit, and that no part of said land had been alienated, except as provided in section 2288 of the Revised Statutes of the United States, and that he was the bona fide owner as an actual settler, of said land, but that in truth and in fact he had made no actual settlement upon, nor had he cultivated or resided upon said land, and said land had been alienated otherwise than as provided by section 2288 of

the Revised Statutes to the defendant Silas A. Gilson, and that said Landis was not at the time of making said affidavit the bona fide owner as an actual settler, or otherwise, or at all.

Ten.

That thereafter, and on or about the 21st day of November, 1902, this complainant, relying upon said false and fraudulent statements, application, affidavits, and testimony procured and advanced
8 by the said Landis, as aforesaid, being true and being deceived thereby, permitted the said Landis to enter said land under the provisions of law governing same, and authorized the Register of said land office to issue and deliver to the said Landis a certificate certifying that he had that day purchased the above-described land for three hundred dollars, and that on the presentation of said certificate to the Commissioner of the General Land Office, the said Landis was entitled to receive a patent for said land.

Eleven.

That thereafter the application of the said Landis, together with the testimony and evidence relating thereto, were duly transmitted by the proper officer of the United States Land Office at North Yakima aforesaid, to the General Land Office of the United States, at Washington, District of Columbia, whereupon, and by reason thereof, the complainant herein, through its proper officers and relying solely upon said false and fraudulent application, affidavits, statements and testimony as being in every respect true, and being deceived thereby, and pursuant to said Register's certificate did, on or about the 21st day of July, 1903, give and grant upon the said Landis the aforesaid lands and premises by patent.

Twelve.

That on said 21st day of November, 1902, the said Landis executed a mortgage covering said land to the defendant Silas A. Gilson, which mortgage was filed for record in the office of the Auditor of Yakima County, Washington, on the same day, and
9 recorded therein in Book "Z" of mortgages at page 50, to which reference is made for further particulars thereof. That on July 13, 1903, the said Landis executed a deed to the said defendant Silas A. Gilson conveying said above-described land, which deed was filed for record in the office of the Auditor of Yakima County, Washington, on the same day, and is recorded therein in Book 21 of Deeds at page 95. That the giving of said mortgage and deed were agreed upon between said Landis and Gilson prior to said November 21st, 1902.

Thirteen.

That the said defendant, Silas A. Gilson, now and at all times since the 13th day of November, 1899, claims to be the owner and entitled to the possession of said lands and premises, but that at the time of the entry of said Landis on said November 13, 1899, and

at the time of his final proof and when said patent was issued, the said Silas A. Gilson knew of the false and fraudulent acts of said Landis hereinbefore stated, and each and every one of them, and knew that said original application to enter, said entry, and each and every thing done by the said Landis, was done for the purpose of securing said lands and premises from the complainant through false and fraudulent measures and acts, and at all of said times knew that each and every act of the said Landis, and other in his behalf, which have heretofore been alleged, were false and fraudulent and during all of said times the said Silas A. Gilson assisted and connived with the said Landis to the end that the complain-
10 ant should be deprived of said lands and premises in the fraudulent manner hereinbefore averred, all of which acts and doings of the said defendants, and each of them, were and are contrary to equity and good conscience, and tend to manifest wrongs, injury and oppression of this complainant.

Forasmuch, therefore, as the complainant has been so as above cheated and defrauded of its valuable lands and is remediless at and by the strict rules of the common law and is only relievable in a court of equity wherein such matters are fully cognizable and relievable; and to the end that the said Silas A. Gilson may full, true, direct and certain answer make, according to the best of his knowledge and belief, to all and singular the matters and charges aforesaid, but not under oath (his answer on oath being hereby expressly waived), complainant prays as follows:

That the said Silas A. Gilson and Daniel Landis may be held, adjudged and decreed to have defrauded complainant of the lands and each and every description thereof hereinbefore set forth as patented by the complainant to the said Landis; and that by reason of such fraud, the patent issued as aforesaid be declared void; and, as such, held for naught and set aside, and the said land restored to the public domain of the complainant; that complainant may have all such further relief in the premises as may be conformable to equity and good conscience, and as may seem proper to this Honorable Court, and that they may have judgment against said defend-
ant for their costs and disbursements herein incurred. May
11 it please your Honors to grant unto complainant a writ of subpœna issued out of and under the seal of this Honorable Court to be directed to the said Silas A. Gilson, commanding him, by a day certain and under a penalty therein to be inserted, to be and appear before this Honorable Court, and then and there answer the premises, and further to stand and to abide such order and decree therein as shall be agreeable to equity and good conscience.

And complainant will ever pray.

A. G. AVERY,
United States Attorney.

[Endorsed:] Filed July 16, 1907. Frank C. Nash, Clerk U. S. Circuit Court, Eastern District of Washington.

United States Circuit Court for the Eastern District of Washington.

No. 24.

UNITED STATES OF AMERICA, Complainant,
vs.
SILAS A. GILSON, Defendant.

Præcipe [*for Subpœna*].

To the Clerk of the Above-entitled Court:

You will please issue Subpœna in Equity directed to the defendant above named.

A. G. AVERY,
United States Attorney.

12 [Endorsed:] Filed July 16th, 1907. Frank C. Nash, Clerk.

[*Summons.*]

UNITED STATES OF AMERICA:

Circuit Court of the United States, Ninth Judicial Circuit, Eastern District of Washington.

In Equity.

The President of the United States of America to Silas A. Gilson, Greeting:

You are hereby commanded that you be and appear in said Circuit Court of the United States aforesaid, at the courtroom of said court, in the city of North Yakima on the second day of September, 1907, to answer a Bill of Complaint filed against you in said Court by the United States of America, and to do and receive what the Court shall have considered in that behalf. And this you are not to omit, under the penalty of Five Thousand Dollars.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, and the seal of the said Circuit Court, the 16th day of July, 1907, and in the 132d year of the Independence of the United States of America.

[U. S. Circuit Court Seal.]

FRANK C. NASH, *Clerk.*

Memorandum Pursuant to Rule 12, *Supreme Court U. S.*

You are hereby required to enter your appearance in the
13 above-mentioned suit on or before the first Monday of September, next at the Clerk's office of said Court, pursuant to said Bill; otherwise the said Bill will be taken pro confesso.

FRANK C. NASH, *Clerk.*

[Endorsed:] Filed July 22d, 1907. Frank C. Nash, Clerk.

In the Circuit Court of the United States for the Eastern District of Washington.

No. 24.

UNITED STATES OF AMERICA, Complainant,
vs.
SILAS A. GILSON, Defendant.

UNITED STATES OF AMERICA,
Eastern District of Washington, ss:

I hereby certify that I have served the within writ by delivering to and leaving a true copy thereof with Silas A. Gilson, personally.

GEO. H. BAKER,
United States Marshal,
By GEO. M. BAKER, *Deputy.*

July 18th, 1907.

Fees	$2.00
Expenses	16.37
	$18.37

[Endorsed:] Filed for Record July 16th, 1907. Frank C. Nash, Clerk.

14 United States Circuit Court for the Eastern District of Washington.

No. 24.

UNITED STATES OF AMERICA, Complainant,
vs.
SILAS A. GILSON, Defendant.

Appearance [of U. S. Attorney].

To the Clerk of the Above-entitled Court:

You will please enter my appearance as attorney for complainant in the above-entitled cause, and service of all subsequent papers, except writs and process, may be made upon said complainant, by leaving same at my address below.

A. G. AVERY,
U. S. Attorney.

Room 41 Exchange Bank Bldg., Spokane, Washington.

[Endorsed:] Filed for Record, July 16th, 1907. Frank C. Nash, Clerk.

[*Substitution and Appearance of Attorneys for the Defendant.*]

United States Circuit Court, Eastern District of Washington, Southern Division.

UNITED STATES OF AMERICA, Complainant,
vs.
SILAS A. GILSON, Defendant.

15 *Notice of Substitution and Appearance of Attorneys.*

Come now Cull, Luse & Davis, and ask that they be substituted as the attorneys for the defendant in the above-entitled action in the place of E. B. Preble, and they hereby enter their appearance in the said cause as the attorneys for the defendants, Silas A. Gilson.

CULL, LUSE & DAVIS,
Attorneys for Defendant.

[Endorsed:] Filed for Record August 22d, 1908. Frank C. Nash, Clerk. By Edw'd E. Cleaver, Deputy.

[*Answer.*]

United States Circuit Court, Eastern District of Washington, Southern Division.

UNITED STATES OF AMERICA, Complainant,
against
SILAS A. GILSON, Defendant.

Answer of the Above-named Defendant, Silas A. Gilson, to the Bill of Complaint of the Above-named Plaintiff.

In answer to said Bill, Silas A. Gilson, defendant, above named, says and shows the Court as follows:

16 I.

Defendant admits the allegations of paragraph one of said Bill of Complaint.

II.

Defendant admits the allegations of paragraph two of said Bill of Complaint.

III.

Defendant admits that on or about November 13th, 1899, one Daniel Landis signed and caused to be filed in the United States Land Office at North Yakima, Washington, a written application in the form provided by the regulations of the General Land Office of the United States to enter under section 2289 of the Revised Stat-

utes of the United States, the lands and premises described in the Bill of Complaint, and that said Landis filed with said written application in said land office an affidavit signed and sworn to by him, said Daniel Landis, and in which the said Daniel Landis swore and made oath in substance, among other things, that the said application was honestly and in good faith for the purpose of actual settlement and cultivation, and not for the benefit of any other person or persons, and that he would faithfully and honestly endeavor to comply with all of the requirements of law as to settlement, residence and cultivation necessary to acquire title to said land, and that he was not acting as the agent of any person, corporation or syndicate in making said entry, nor in collusion with any person, corporation or syndicate to give them the benefit of the land entered or any part thereof or the timber thereon, and that he did not apply to enter the same for the purpose of speculation but in good faith
17 for himself, and that he had not made directly or indirectly made and would not make any agreement or contract, in any way or manner, with any person or persons, corporation or syndicate by which the title he might acquire from complainant should inure in whole or in part to any person except himself, but the said defendant denies that the said Landis filed in the said land office the said application or the said affidavit with the knowledge or consent or connivance of the said defendant or at said defendant's procurement or instigation.

Defendant denies that each or all or any of the averments or declarations set forth in said affidavit or application or contained therein were false or fraudulent, or that the said Landis knew the same were false or fraudulent, and defendant denies that the said Landis did not make said application honestly and in good faith, and for the purposes of actual settlement and cultivation, and defendant denies that the said application or entry was for the purpose of another person or for the purpose of defendant, Silas A. Gilson; defendant denies that the said Landis, when said application was made and when said affidavit was sworn to did not intend to faithfully and honestly endeavor to comply with any and all of the requirements of law as to settlement, residence and cultivation necessary to acquire title to the land applied for or that said Landis then and there, acted in collusion with defendant, Silas A. Gilson, or for the purpose of giving defendant the benefit of the land entered or the timber thereon or that said Landis made said application
18 or affidavit or entry for the purpose of speculation, or that said Landis did not make the said affidavit and application in good faith to obtain a home for himself, or that said Landis had at that time or at any time made an agreement with the defendant, Silas A. Gilson, wherein the latter was to have the benefit of the said application or entry.

IV.

Defendant denies that the said Landis had not, when he made the application and affidavit aforesaid, to enter said land, establish his residence on said land, or that he has not resided thereon since

making said application, and defendant says the fact to be that the said Landis was residing on said land when said application was made, and continued to reside thereon until long after he made final proof and issuance of and receive- certificate of the register of said land office certifying that he had purchased the said lands, to wit, until long after November 21st, 1902.

V.

Defendant admits the allegations of paragraph six in said Bill of Complaint.

VI.

Defendant admits that on or about October 15, 1902, the said Landis filed in said land office notice of his intention to make final proof on said homestead application on November 21st, 1902, as required by law, and that said notice was published in accordance with the rules and regulations of the land office and of the law in such cases provided, and that on said November 21st, 1902,
19 said Landis for the purpose of commuting said homestead entry, subscribed and filed an affidavit with the United States Land Office at North Yakima, aforesaid, wherein he declared and swore that he made settlement on said land on the 13th day of November, 1899, and since said date, he had continued to reside thereon up to the time of making said affidavit, and that he had cultivated about three acres thereof, and that no part of said land had been alienated except as provided in section 2288 of the Revised Statutes of the United States, and that he was the sole and bona fide owner thereof as an actual settler, and defendant further admits that in said affidavit said Landis stated that he had built a house on said land, but defendant avers that in an affidavit of said Landis called therein "Homestead Proof—Testimony of Claimant," and filed with the affidavit first aforesaid, the said Landis, in answer to an interrogatory propounded to him by the register and receiver of said land office, stated that his house was built in the spring of 1899, and that he bought the house from the party who built it and that he moved in the house on November 13, 1899, so that complainant was not and could not have been misled or deceived by the statement in said affidavit, first named, as to construction of said house, and defendant further admits that in said affidavit, first aforesaid, that is a statement to the effect that said Landis "broke" about thirteen acres of said land, but that in the affidavits filed with said affidavit first aforesaid of the witnesses of said Landis for the purpose of final proof, each of said witnesses in answer to the interrogatory then propounded by the register and receiver:
20 "What improvements are on the land and what are their value," answered, among other things, "Thirteen acres are clear and ready for cultivation and three acres cultivated for three seasons," so that the said complain-t was not and could not have been misled or deceived by the said statement that thirteen acres had been "Broken."

Said defendant denies that said affidavit hereinbefore first referred to, and referred to in paragraph seven of said Bill of Complaint, or any averment therein, was false or fraudulent or that said Landis then knew the same to be false or fraudulent; defendant denies that the said Landis did not make settlement on said land on the 13th of November, 1899, and that he did not build a house thereon, to wit, purchase and repair a house built prior thereto as set forth in his said testimony, and said defendant denies that the said Landis had not at the time of filing said affidavit continuously resided upon said land and denies that he had not cultivated three acres thereof, and denies that he had not "broken" thirteen acres, to wit, cleared the same as set forth in the testimony of said witnesses; and defendant denies that at the time of making said affidavit, the said Landis had alienated or agreed to alienate said land to the defendant, Silas A. Gilson, or to any other person, and defendant denies that said Landis was not then and at all times prior thereto the sole and bona fide owner of said land as an actual settler; and said defendant alleges the truth to be that each and every averment in said affidavit referred to was, and is, true as therein set forth, and that said Landis, at the time of making said final proof, and
21 of making said affidavit, had in fact resided continuously upon said land, from the time he applied to enter the same, and had continuously improved and cultivated the same during all of the said time. Defendant denies that said house was not inhabitable.

VII.

Defendant admits that on or about 21st day of November, 1902, and at the time of filing his affidavit mentioned in paragraph seven of said Bill of Complaint, said Landis for the purpose of presenting to the register of said land office proof of his right of commutation in respect to said entry of said land, filed in said land office his affidavit sworn to before the register of said land office, wherein, among other things, said Landis averred that he had settled upon said land and established his residence thereon November 13, 1899, and that he had resided continuously on said land ever since and made his home thereon from said time; and defendant avers the truth to be that each and every of said averments in said affidavit were and are true, and defendant denies that said averments or any of them in said affidavit contained were or are false or fraudulent or known by said Landis to be false or fraudulent; defendant avers that in truth and in fact said Landis did establish his residence upon said land on November 13, 1899, and did reside and make and have his home thereon continuously from November 13, 1899, up to the time of the filing of said affidavit on the 21st of November, 1902, and for long thereafter; defendant admits that in said affidavit, the
22 said Landis averred that he had cultivated about three acres for three seasons, and that he had not sold, conveyed or mortgaged any portion of said land, but defendant denies that said Landis had not cultivated three acres for three seasons and denies that said Landis at the time of making said affidavit had sold said land and alleges the truth to be that at the time of making said affidavit, the

said Landis had cultivated three acres of said land for three seasons immediately preceding the making of said affidavit.

VIII.

Defendant admits that on the 21st day of November, 1902, the said Daniel Landis for the purpose of perfecting his final proof, made before the register of the said land office an affidavit wherein he averred that he had made settlement upon said land and had resided thereon ever since November 13, 1899, and up to the time of making said affidavit, and that no part of said land had been alienated except as provided in section 2288 of the Revised Statutes of the United States, and that he had cultivated about three acres of said land, and defendant avers that each and every of said statements in said affidavit were and are true, and defendant denies that said Landis had made no actual settlement, and that he had not cultivated and that he had not resided upon said land, and denies that said land or any part thereof had been alienated at or prior to the time of filing said affidavit, and denies that the said land or any part thereof had been alienated to Silas A. Gilson, said de-
23 fendant, and denies that said Landis was not at the time of making said affidavit the bona fide owner as an actual settler of said land.

IX.

Defendant admits that on or about the 21st day of November, 1902, said complainant permitted the said Landis to enter said land under the provisions of law governing the same and authorized the register of said land office to issue and deliver to the said Landis a certificate certifying that said Landis had on the 21st of November, 1902, purchased the said land for $300.00, and that on the presentation of said certificate to the Commissioner of the General Land Office, the said Landis was entitled to receive a patent for the said land, but defendant denies that in permitting the said Landis to enter the said land or in authorizing the issuance of said certificate or in issuing it, the said complainant relied upon any false or fraudulent statements or affidavits or application or testimony procured and advanced by the said Landis, or that any of said statements, applications, affidavits or testimony or any part thereof were or are false or fraudulent in any particular.

X.

Defendant admits that on the 21st day of July, 1903, the complainant herein gave and granted unto the said Landis the aforesaid lands and premises described in the Bill of Complaint; but defendant denies that the complainant in issuing said patent relied wholly or at all upon any false or fraudulent application or affidavit or statement or testimony, or that the said complain-t was deceived by any application, affidavit, statement or testimony or that any ap-
24 plication, affidavit, statement or testimony or any part thereof in the said proceeding or in any way connected therewith

were false or fraudulent, and defendant denies that in issuing said patent or certificate the complainant relied wholly or at all upon any false application, affidavits, statements or testimony or any thereof.

XI.

Defendant admits that on 21st of November, 1902, the said Landis executed a mortgage covering said land to the defendant, aforesaid, and that said mortgage was filed for record in the office of the Auditor of Yakima County, Washington, on the day last aforesaid, and recorded therein in Book "Z," at page 50; defendant admits that on July 13, 1903, the said Landis executed a deed to the said defendant, Silas A. Gilson, covering the said land, and that said deed was filed for record in the Auditor's office for Yakima County on the day last aforesaid and recorded in Book "21" of Deeds at page 95.

Defendant denies that the giving of said deed or mortgage was agreed upon by said Landis and Gilson prior to said November 21, 1902, and alleges the fact to be that the giving of said mortgage was not agreed upon until the same was executed and after final proof was made by the said Landis for the said land, and that the giving of said deed was not agreed upon until the same was actually executed on July 13, 1903.

XII.

Defendant denies that said defendant at any time prior to the execution of said deed on July 13, 1903, claimed to be the
25 owner of said land or entitled to the possession of said land or any part thereof, or that the said defendant at the time of entry of said land on November 13, 1899, or at the time of the final proof thereof, or when said patent was issued, or at any time, or at all, knew of any false or fraudulent acts of said Landis in connection with the said entry or proof, and deies that there are or were any false or fraudulent acts of said Landis in said matter, and defendant denies that he at any time or ever knew the said application to enter said land or anything done by the said Landis was done for the purpose of securing said lands through any false or fraudulent acts, and alleges the truth to be that in entering said application or any other act or thing done by the said Landis or in his behalf in respect to said land was false or fraudulent or for the purpose of securing said lands by false or fraudulent acts; defendant denies that he assisted or connived with the said Landis to the end that the said complainant should be deprived of said land in the fraudulent manner set forth in said Bill of Complaint or in any manner whatsoever, or that any act or doings of the defendant were or are contrary to equity or good conscience, or tend to the wrong or injury or oppression of the complainant, and defendant avers the truth to be that he did not assist the said Landis or connive with him to obtain the said lands from the complainant or otherwise.

Said defendant further answering herein, and for affirmative defense, alleges the following facts:

26 I.

That on the 21st of November, 1902, at the time of and prior to the execution of the mortgage herein referred to, there was on file and of record in the United States Local Land Office at North Yakima, and in the General Land Office of the United States at Washington, D. C., the application and affidavit of said Daniel Landis filed in said local office on November 13, 1899, to enter the land described in the Bill of Complaint under the provisions of the Act of Congress of May 20, 1862, commonly called the Homestead Act and the Acts amendatory thereof and supplementary thereto, to wit, section 2289 of the Revised Statutes of the United States, and the allowance by said complaint of said entry on said date and the notice by said Landis filed in said local office November 15, 1892, of his intention to make final proof to establish his claim to said land before the register and receiver of said local office on November 21st, 1902, and the order of said register made and filed October 15, 1902, directing the publication of said notice, and the notice signed by said register October 15, 1902, that said Landis intended to make said proof before said register and receiver on November 21st, 1902, and proof and affidavit of publication of said notice for five weeks immediately prior to the date last aforesaid, made before said register and filed in said office November 14, 1902, and the certificate of the said register made November 21, 1902, of the posting of said notice in said local office for thirty days immediately prior to November 21, 1902, and the affidavit made and filed before said register in said local office November
27 21, 1902, by said Landis in substance that he, the said Landis, claimed the right to commute under section 2301 of the Revised Statutes of the United States his homestead entry upon said land and that he had made settlement thereon November 13, 1899, and that ever since said date to the date of the filing of said affidavit, to wit, November 21, 1902, had continued to reside on said land, and had then resided thereon, and had a house thereon in which during all said time he had resided, and that he had broken and cultivated three acres of said land, that no part thereof had been alienated except as provided by section 2288 of the Revised Statutes of the United States, and that he was the sole bona fide owner as an actual settler of said land, and that he had not theretofore perfected or abandoned any entry made under homestead laws of the United States, and that there was also on said November 21, 1902, at and prior to making of said mortgage, on file in the local land office the affidavit of Daniel Landis filed with the affidavit last aforesaid filed on said November 21st, 1902, the affidavit of said Daniel Landis in substance and effect that there was not to his knowledge upon said land any deposit of coal or of precious metal, to wit, the so-called non-mineral affidavit in such cases required to be made by the regulations of the Department of the Interior, and that there was on said November 21st, 1902, at and prior to the time of making said mortgage, on file in said local land office the affidavit and testimony of the said Daniel Landis made and filed in said land

office on the date last aforesaid, to the effect that he had
28 established his residence on said land November 13, 1899, and had ever since that date and up to the date last aforesaid, continuously resided and made his home upon said land in a house thereon purchased by him, and that he had for three seasons cultivated three acres of said land, and there was at said time and filed therein on date last aforesaid the testimony of two witnesses in corroboration of said affidavit and testimony of the said Landis and in the same substance and to the same effect, and that the said application to enter said land and affidavit accompanying the same and the notice of intention to make final proof and the notice signed by the register and of said Landis of said intention to make final proof and the affidavit, aforesaid, of said Landis claiming the right to commute said entry and the said testimony and affidavit of said Landis and the said testimony and affidavit of said two witnesses, and said allowance of said entry and said non-mineral affidavit and said affidavit of publication and order therefor, and each and every of said papers, files and proceedings were in full compliance with the accurate conformity to the said law, and Act of Congress, under which they were had, to entitle the said Landis under said law to a patent from the United States of the said lands and to a certificate from the said register of said local office to the effect that the said Landis was entitled to the said patent upon the presentation thereof to the General Land Office, and that on the said 21st of November, 1902, at and prior to the time of making said mortgage, there was also on file and of record in the said local land
29 office the order of allowance and certificate of the said office and of the said complainant and of the register of said local office to the effect that said Landis, because of full compliance with said law, was entitled to said patent, and that upon said November 21st, 1902, at the time of the making of said final proof, as aforesaid, the said Landis paid to the United States of America, to wit, to the receiver of said local land office the sum of $300.00, and the United States of America and the said receiver received the said money from the said Landis as full payment for said land, and then and there the said receiver of the United States Land Office delivered to the said Landis his receipt for the said $300.00, expressing therein that it was in full payment for said land, and the said register upon said date delivered to the said Landis his certificate to the effect that the said Landis had upon said date purchased the said land from the United States and had paid therefor said $300.00, and that he was entitled to receive a patent from the United States for the said land, and that upon the said November 21, 1902, at and prior to the time of execution of said mortgage, there appeared on file and of record in the said local land office and in the said general land office of the United States the said papers, files and proceedings and such papers, files and proceedings as showed that said Landis was entitled to a patent from the United States to the said lands and that he was the owner of the same, and that said files and proceedings and all thereof were filed and had regularly and in accurate and full conformity to the provisions of the said laws and to
30 the regulations and requirements of the land department of the United States in such cases made and provided, and that

it then appeared therefrom that said Landis had purchased the said lands, had paid therefor, and was entitled to a patent thereto from the said complainant.

II.

That on the said 21st day of November, 1902, the said Daniel Landis was justly indebted to the said defendant, Silas A. Gilson, in the sum of $640.00, on account of moneys by said defendant theretofore at the request of the said Daniel Landis actually loaned and advanced to the said Daniel Landis and paid to his use in the said sum of $640.00 upon the promise of the said Daniel Landis to repay the same to the said defendant; and that on said 21st day of November, 1902, the said Daniel Landis, being as aforesaid justly indebted in said sum to the said defendant, and being actually seized and possessed of said land and claiming to own the same in fee, and the records of the said local and general land office of the United States showing, as aforesaid, that said Daniel Landis had made final proof, aforesaid, entitling him to said land and to a patent therefor, and the said records being as aforesaid, complete and regular and all of the proceedings necessary to be had and taken by the said Landis entitling him to said patent upon the payment of said $300.00, purchase price, the said defendant loaned the said Landis said $300.00 upon promise to repay the same, for the purpose of making said payment, said $300.00 being a part of the said $640.00 in which the said Landis was indebted as aforesaid, and being so in-
31 debted, as aforesaid, and the records of said land office, as aforesaid, exhibiting all of the said proceedings and all of the said proceedings and requirements fully and accurately had and taken, in full compliance with all of the provisions of the said laws and of the requirements of the Department of the Interior of the said complainant to entitle said Landis to a patent to said land, and said Landis executed to the defendant, to secure the said indebtedness, his mortgage upon the said land, being the mortgage referred to in the Bill of Complaint herein, together with his note in said amount; that in and by said mortgage the said Landis covenanted with the said defendant that he was actually seized of said lands and the owner thereof free from all claims and encumbrances and said defendant loaned the said $300.00, in reliance upon said proceedings in said land office, and believing the said Landis to be the actual owner of the said lands and without any knowledge or notice of the alleged and pretended falsehoods and frauds set forth in the Bill of Complaint, or of any falsehoods or frauds or that said complainant had or claimed to have any right, title or interest in or to said lands or that said complainant claimed to be the owner thereof, and that thereafter on July 13, 1903, the said land offices exhibiting the facts and proceedings, aforesaid, the said Landis pretending and claiming to be the owner in fee simple of the said lands and premises, was then, and ever since November 13, 1899, continuously had

been in the actual possession and seized of the said lands, and
32 that on the said July 13, 1903, the said defendant, believing the said Landis to be the actual owner of the said lands in fee, and the said note and mortgage being wholly unpaid and unsatisfied, and the said Landis being indebted in the sum of $672.00 principal and interest to the defendant, and the said land office exhibiting all of the said facts and proceedings, as aforesaid, the said defendant agreed with the said Landis for the purchase of said lands by the defendant in fee simple, for the price of $672.00, whereupon the said Landis upon the date last aforesaid conveyed the said lands to this defendant by his deed dated on said day, which deed was a warranty deed and contained a covenant on the party of the said Landis that he was possessed and seized in fee of the said lands and the same were free from all encumbrances, that on the day last aforesaid the said defendant paid the said Landis, upon the delivery to the defendant of said deed, the said sum of $672.00, to wit, surrendered to said Landis and discharged the said promissory note and indebtedness and released the said Landis therefrom; that this defendant had not at or before the time of said conveyance or of the payment of the said purchase money, the surrender and cancellation of said note and release of said indebtedness, any notice or knowledge whatsoever, either expressed or implied, or of any kind or nature that said complainant claimed to own said land or claimed to be the owner thereof or pretended to have any claim or estate or right or interest therein or claim thereto, or of any fact or facts by which the said entry of said lands by said Landis might be
33 impeached, or of any of the pretended and alleged frauds or falsehoods in the Bill of Complaint averred to have been perpetrated; that the fair market value of the said land at the time of the said purchase by defendant did not exceed $500.00; that the defendant received said mortgage and purchased and paid for said land in good faith and paid therefor full value, and in virtue of the premises became, was and is a bona fide purchaser for full value of the said lands without any notice of any facts whereby the validity of the entry might be impeached, or of any of the pretended and alleged frauds averred in the Bill of Complaint or of any frauds or falsehoods whatsoever in connection with the said proceedings and entry of said land in said land office or concerning the same; that on July 21st, 1903, the United States patented the said lands in fee simple to said Daniel Landis, and that said patent was issued upon said entry and in pursuance of said proceedings had in said land office.

Further answering this defendant says as follows: This defendant denies all and all manner of unlawful combination and confederacy wherewith he is by the said Bill of Complaint charged, without this, that there is any other matter, cause or thing in the said Bill of Complaint contained (material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied) is true to the knowledge or belief of this defendant; all of which matters and things this defendant is ready and willing to aver,

maintain and prove as this Honorable Court shall direct;
34 and defendant humbly prays to be hence dismissed with his costs and charges in his behalf most wrongfully sustained.

SILAS A. GILSON,
Defendant.

E. B. PREBLE,
Solicitor for Defendant, Silas A. Gilson,
North Yakima, Washington.

STATE OF WASHINGTON,
County of Yakima, ss:

Silas A. Gilson, being first duly sworn, says that he has read and knows the contents of the foregoing Answer, and that he verily believes the same to be true all and singular, and that said answer of affirmative defense is not interposed for delay.

SILAS A. GILSON.

Subscribed and sworn to before me this 27th day of September, 1907.

[SEAL.] ALLEN S. DAVIS,
Notary Public in and for the State of Washington,
Residing at North Yakima.

STATE OF WASHINGTON,
Yakima County, ss:

I, E. B. Preble, hereby certify that in my opinion the foregoing answer and affirmative defense and each thereof is well founded in point of law.

E. B. PREBLE,
Solicitor for Defendant.

[Endorsed:] Filed in the U. S. Circuit Court, Eastern Dist. of Washington. Sept. 30, 1907. Frank C. Nash, Clerk. Edw'd E. Cleaver, Dep.

35 In the Circuit Court of the United States for Eastern District of Washington, Southern Division.

No. 24.

UNITED STATES OF AMERICA, Complainant,
vs.
SILAS A. GILSON, Defendant.

Stipulation [for the Taking of Testimony, etc.].

It is hereby stipulated and agreed that the testimony of the complainant's witnesses and any other evidence desired to be taken or adduced herein may be taken on the 22d day of August, 1908, at

ten o'clock in the forenoon, and from day to day thereafter as such proceedings shall be continued, at the Federal courtroom in the city of North Yakima, Washington, before E. E. Cleaver as Examiner; and

It is further stipulated that said Examiner, in taking any testimony herein, may be considered as having been duly and regularly appointed by the Court so to do and qualified to act, with all of the powers of an Examiner duly appointed by the Court under the Equity Rules without further appointment or direction of said Court, and he shall take and report to the Court the testimony taken before him according to law and the Equity Rules.

It is further stipulated that said defendant shall have thirty days thereafter in which to put in his testimony in said cause before the same Examiner, under the same conditions, and at the same
36 place, but that it can be so done only upon giving four days' notice to the complainant.

It is further stipulated herein that in taking said testimony the said Examiner shall have the right to have the same taken down in shorthand and reduced to typewriting by some competent person, to be by him selected, and when the testimony is taken in that manner, it is understood and agreed that it shall have the same force and effect as if it had been so taken in shorthand and reduced to typewriting by said Examiner personally.

Dated this 11th day of August, A. D. 1908.

A. G. AVERY,
Solicitor for Complainant.
JAMES O. CULL,
Solicitor for Defendant.

[Endorsed:] Filed for Record August 22d, 1908. Frank C. Nash, Clerk. By Edwd. E. Cleaver, Deputy.

[*Order Appointing Examiner to Take Evidence, etc.*]

In the Circuit Court of the United States for the Eastern District of Washington, Southern Division.

No. 24.

UNITED STATES OF AMERICA, Complainant,
vs.
SILAS A. GILSON, Defendant.

37 It appearing to the Court that the respective parties to the above-entitled cause have heretofore duly stipulated that E. E. Cleaver act as Examiner to take evidence in the above-entitled cause, and it appearing that the said parties have acted upon said stipulation and that said Cleaver already has, and probably will hereafter, take further testimony as such Examiner, Now, therefore, on motion of the United States Attorney, because of the facts and by reason of the premises, it is hereby

Ordered and adjudged that said E. E. Cleaver be, and he is hereby, appointed Examiner to take the evidence in the above-entitled cause, and his acts and doings heretofore as such Examiner, under said stipulation, are hereby approved and confirmed, and are adjudged to be of the same force and effect as if done after his appointment to the position of Examiner by an order of this Court.

Done in open court this 4th day of September, A. D. 1908.

EDWARD WHITSON, *Judge.*

[Endorsed:] Filed for Record, Sept. 4th, 1908. Frank C. Nash, Clerk.

38 [*Depositions.*]

In the District Court of the United States for the Eastern District of Washington, Eastern Division.

UNITED STATES OF AMERICA, Complainant,
vs.
SILAS A. GILSON, Defendant.

Depositions of Chas. A. Bryant, Fred Seymor, I. S. Brook, D. T. Meyer.

Pursuant to a stipulation by and between the above-named parties to the above-named cause heretofore filed in said cause, the following named persons were duly sworn and examined before me, Edward Cleaver, Examiner in North Yakima, Washington, on August 22, 1908, A. G. Avery appearing on behalf of the complain-t and Cull, Luse & Davis appearing on behalf of defendant, and the following proceedings were had, to wit:

[*Deposition of Charles A. Bryant for the Plaintiff.*]

CHARLES A. BRYANT, called, sworn, and testified as follows on behalf of the plaintiff:

Direct examination.

(By Mr. AVERY:)

Q. Where do you reside, Mr. Bryant?

A. I live*d* in East Selah.

Q. Did you live near the east half of the northwest quarter
39 and northeast quarter of the southwest quarter of section 20, township 14 north of range 19 east?

A. I live*d* at the present time about—close to one mile north of there now.

Q. How long have you lived where you now live?

A. I have only lived there about two years, two years last June.

Q. What was your business along in 1901 and 1902?

A. I was at that time farming. I was also investigating an irrigating proposition a little.

Q. You are familiar with this property I have just described?
A. Yes, sir.
Q. How familiar were you with it during that period?
A. Why, I was over the place on an average about three or fou times a year, across it.
Q. You know the character of the improvements that were on i at that time?
A. Yes, sir.
Q. Do you know what, if any, improvements had been placed o the land I have described prior to November 21st, 1902?
A. Yes, sir.
Q. What, if anything, was on there?
A. The only thing that I saw there was—it might have bee between five and eight acres that had been—the sagebrush had bee grubbed off of it and a shack on it about 12 x 16. This is the onl building I have ever seen there of improvements of any kind.
Q. Any fence?
A. No, sir.
Q. Any wells?
A. No, sir.
Q. Anything of any kind that would be an improvement from farming standpoint?
40 A. Not that I have seen.
Q. Would you have seen it if it had been there?
A. I think I would.
Q. Did you during that trip at different times you saw it during that period, was any one living there?
A. There was once that I was across the place, I think it was during the spring or summer of 1901, that there was somebody in the shack. I was close enough so that I heard them and there was smoke coming out of the chimney, or out of the stove pipe.
Q. Ever see any farming implements around the house?
A. No, sir.
Q. Wagons, tools?
A. Never saw anything.
Q. What was the character of this shack?
A. It was a shack about 12x16 with a shed roof on it about 5½ feet high on the low side and possible nine or ten feet on the upper side, boarded up and down, I think battens on, with one door and half of a window, not a full window. It was what we consider one sash.
Q. Was it then an old building or a new one?
A. It was an old building.
Q. Was it rough boarded or match boarded?
A. It was rough boarded.
Q. What kind of underpinning was there,—foundation?
A. Stones, I think, or blocks.
Q. Do you know the defendant in this action, Silas Gilson?
A. Yes, sir.
41 Q. This is the gentleman here at the table (indicating)?
A. Yes, sir.

Q. Did you ever talk with him anything about this land?

A. I asked him in the spring of 1902, I think it was in March. I was going over there and I saw Mr. Gilson, or a person living down in the building. I didn't know who owned the land at that time, and I never had seen anybody there but this time. It was in the spring, and I seen someone down there and I went down, and Mr. Gilson was living there, and I had met Mr. Gilson once before that.

Q. You mean Mr. Gilson was living on the land we are talking about?

A. No, sir, living on lands that he owned, and I asked him who owned different pieces of land up there, and this piece was one.

Q. That is the piece in this case?

A. Yes, sir, and he told me the party's name and said he was stopping at that time down in the valley, and I asked him if he would sell it.

Q. What party did he say it was?

A. He said it was Mr. Landis, and he said he could not, that he owned the building and that he was going to get the land, and that was all that he ever said to me about it.

Q. That was in March, 1902?

A. Yes, sir, either March or April. It was in the spring I know.

Q. Did you have any further conversation about your getting it, or the ownership of it, or the contemplated ownership of it by Mr. Gilson?

42 A. Nothing at all. I was wanting to get some land over there to try a pumping proposition and I wanted deeded land. Bought deeded land afterwards.

Q. Do you think your observation and opportunity to see the place, do you think that you would have known if any one was residing there?

A. Why I think so.

Q. How far did you live from it?

A. I live alongside of the place, about on a line I should—three and a half miles.

Q. Could you see the house?

A. Yes, sir.

Q. Was it fenced in any way?

A. No, sir, no fence on the place. There was a fence between Mr. Gilson's land and this land on the west, along on the west side of this land, but the north side and each side of this land was open to the country. Mr. Gilson had his property next and that made the fence on the west side.

Q. Did Mr. Gilson own land at that time, not this land in controversy?

A. Yes, sir.

Q. Did he have a house or a home on his land?

A. Yes, sir.

Q. How far was that from the Landis house?

A. I should judge 180 rods. I don't think any further than that.

Cross-examination.

(By Mr. LUSE:)

Q. Mr. Bryant, you may state just exactly what was said between you and Mr. Gilson at the time you had the conversation.

43 A. I asked Mr. Gilson who owned that piece of property, that shack up there. I had asked him also who owned different shacks that were up there. There was another shack over half a mile, but this shack, I asked him who owned that and he said, "An old man by the name of Landis."

Q. Is that just the words you used?

A. Yes, sir.

Q. Who owns that shack?

A. Yes, sir, who owns that shack, or that piece of property, land.

Q. Well, how did you make it known what piece of land it was?

A. By asking him whose land that was that joined him on the west there and pointing to the shack.

Q. Did you say it joined him on the west?

A. Joined him on the east.

Q. Did you say that? Are those the words you used?

A. I wouldn't say that those are the words; but words to that effect, and I made him understand the land that I meant.

Q. How do you know he understood the land you meant?

A. Because he answered it all right, because he told me that was the piece of land—that was the land I was inquiring of.

Q. And he told you he owned that land?

A. No, sir, he owned the shack.

44 Q. He owned the shack?

A. Yes, sir.

Q. What else did he say?

A. I asked him whether he wanted to sell it or not, and he said it wasn't proved up on.

Q. Did you want to buy the shack?

A. No, sir, I wanted to buy the land.

Q. You say that he said he owned the shack and you asked him if he wanted to sell it?

A. I asked him if Landis wanted to.

Q. You asked him if Landis wanted to?

A. Yes, sir, then Gilson said he owned the shack and that he couldn't sell it. He agreed to let me have it——

Q. That is, the shack?

A. The land.

Q. You didn't say so.

A. Yes, I did say so.

Q. Now, was that all the conversation you had with him?

A. All about that piece of ground. We talked on other subjects.

Q. How did you fix the date of this?

A. Because I know it was in the spring of 1902.

Q. How do you fix that date?

A. Because I had only lived in the country up to that time. I have a fairly good memory to remember things.

Q. It is not always easy to just remember dates of a transaction that don't interest you.

A. I didn't say the date it was. I didn't say on the 10th or 12th, but I know it was in the spring of 1902, either March or April.

45 Q. Isn't it a fact that it might have been the spring of 1903?

A. No, sir.

Q. Sure of that?

A. Yes, sir.

Q. You and Mr. Gilson are not on good terms?

A. Nothing in the world against him. I never had a word with him.

Q. Answer the question, please.

A. We are on good terms as far as I am concerned. I have nothing against Mr. Gilson.

Q. Now, how often were you on that land?

A. I said about three or four times a year I crossed it.

Q. That was all you were on it?

A. Up to that time.

Q. How many times were you on it in the year 1902?

A. About three or four times.

Q. How many times were you on it in the year 1901?

A. About the same.

Q. And asked whether anybody was living there, that was the extent of your information?

A. Yes, sir.

Q. Now, wasn't some of this land in crop in 1902?

A. No, sir.

Q. Sure of that?

A. Yes, sir.

Q. Any of it in crop in the year 1901?

A. No, sir.

Q. Sure of that?

A. Yes, sir.

Q. Then you are sure there are no five or six acres cleared?

A. I said possibly eight acres might have been grubbed.

46 Q. None of it broke?

A. No, sir.

Q. You are just as sure of that as any statement you have made?

A. Yes, sir, sure as I am living.

Redirect examination.

(By Mr. AVERY:)

Q. What do you mean by grubbed?

A. Sagebrush—all that country is all covered with sagebrush standing about that high (about three feet), and cut off and piled up, disposed of. I don't know what became of it, it wasn't there.

Q. Do they burn sagebrush as fuel?

A. A great many people do, or used to. Some sections of the country they depend on that entirely for fuel.

[*Deposition of Fred Seymor for the Plaintiff.*]

FRED SEYMOR, called, sworn, and testified as follows on behalf of the plaintiff:

Direct examination.

(By Mr. AVERY:)

Q. What is your name?
A. Fred Seymor.
Q. Where do you reside?
A. Something like 3½ miles this side of Gilson.
Q. Do you know the place that I have described here as the Landis homestead?
A. Yes, sir.
Q. How far from that do you live?
A. About 3½ miles, I think.
Q. Can you see it from your home?
47 A. I am not sure whether you can or not.
Q. What is your occupation?
A. I have got a farm.
Q. Ranch?
A. Yes, sir.
Q. How long have you lived up in that place?
A. I have been there—I was there eight years in March.
Q. You went there then, I take it, in 1900, in the spring of 1900?
A. Yes, sir. It was March, eight years ago anyway.
Q. Do you know the, seen the building that was on the Landis homestead?
A. I have seen it but never paid any particular attention to it.
Q. Do you pass there frequently?
A. No, sir, I think I have never been there but three times since I have been there, passed the shanty since I was there.
Q. How far is that—when you say you have been there but three times, do you mean on the place or alongside of it?
A. On the place.
Q. You have been alongside of it more than that?
A. Yes, sir.
Q. A good many times.
A. Well, a number of times. I couldn't state how many.
Q. Did you ever see anyone residing there?
A. No, sir.
48 Q. Did you ever see anything around the house in the shape of tools, or improvements, or anything that indicated that any one resided there?
A. No, sir.
Q. I mean prior to November 21, 1902.
A. Well, this is a long time ago and a person can't remember things just right. Now, up to the time that it was deeded there was no improvements except the house that I saw, except grubbing.

Q. See any tools around there?
A. No, sir.
Q. See any improvements in the nature of fences?
A. No, sir.
Q. Or well?
A. No, sir.
Q. Or cattle?
A. No.
Q. Not improvements, exactly—did you ever see any cattle or horses, or stock?
A. I have seen stock I presume there, but it wasn't fenced. Liable to be anybody's stock.
Q. Do you think that you would have known it if anyone was living there regularly?
A. If they was living there all the time I certainly would have known it.
Q. Do you know Mr. Gilson, the defendant?
A. Yes, sir.
Q. Did you ever have any conversation with him about Landis holding this place?
A. I never did till he came for me for a witness.
Q. Who came for you for a witness?
A. He and Mr. Landis both came.
Q. Witness for his final proof, homestead proof?
49 A. Yes, sir.
Q. What did Mr. Landis or Mr. Gilson say to you then?
A. Why, they told me they would like to have me for a witness, and passed there not long before and didn't see any farming done, and asked him if the necessary farming and improvements was done on the place, and Mr. Gilson said "The ploughing wasn't done," and said it would be done before the time expired. That may not be the exact words, but something like that.
Q. When was that?
A. That was before it was proved up.
Q. A month or two or a week?
A. I presume—I don't remember how long afterwards they did prove up.
Q. They were getting witnesses for final proof?
A. Yes, sir.
Q. Did Mr. Gilson at that time say anything about he was going to get the place?

To which Mr. Luse upon the part of the defendant objects for the reason that it is leading.

A. What he said, he was furnishing Landis money, and told in the neighborhood all about what it would cost him, and said he was giving Landis one hundred dollars and was getting the property.
Q. Did he say what Landis was going to do with the property when he got it?
A. No.
Q. You used the expression that he was going to get it?

A. Yes, sir.

50 Q. Well, what was the—what were you referring to——

A. Well, he said he was going to get it.

Q. Get what?

A. Get the place, the ranch.

Q. Landis said this?

A. No, Gilson.

Q. At that time—that was in Landis' presence?

A. Yes, Landis was there.

Q. Did you know Landis?

A. Yes, sir.

Q. How old a man was he?

A. I couldn't say how old he was. Pretty old man, though.

Q. Well, can you make it—was he fifty, sixty, seventy or eighty?

A. He must have been seventy or eighty years old. Might have been older.

Q. An unmarried man?

A. Supposed to be.

Q. How long had you known him?

A. Saw him off and on every little while since I came over there eight years ago.

Q. What response did you make in regard to the witness?

A. When he said the ploughing wasn't done I told him to get some one else.

Q. Landis dead now?

A. Supposed to be.

Q. Do you know whether or not he was taken to the asylum for the insane?

A. I have heard that he was.

51 Cross-examination.

(By Mr. LUSE:)

Q. How many times were you on that land before November, 1902?

A. Well, I don't think that I was there over three or four times on the land at all. Don't think I have ever been there—haven't been there since.

Q. Over three or four times?

A. No, sir.

Q. Can you repeat the exact words that Mr. Gilson said to you when you went there and he asked you to become a witness?

A. No, sir.

Q. You consented to be a witness, didn't you?

A. No, sir.

Q. Did you know that your name was published on a notice as one of the witnesses?

A. No, sir, I did not.

[*Deposition of I. S. Brooks for the Plaintiff.*]

I. S. BROOKS, called, sworn and testified as follows on behalf of plaintiff:

Direct examination.

(By Mr. AVERY:)

Q. What is your name?
A. I. S. Brooks.
Q. Where do you reside?
A. Selah Valley.
Q. How long have you lived there?
A. Well, something like fourteen years.
Q. You heard me describing the land in controversy here, didn't you?

—. ——.

52 *A*. That was known as the Landis homestead, wasn't it?
A. Yes, sir.
Q. How far from that land have you resided during this period of fourteen years?
A. Oh, about a mile and three-quarters, something like that.
Q. You know the defendant, Silas Gilson?
A. Yes, sir.
Q. You knew Daniel Landis?
A. Yes, sir.
Q. Is Landis dead?
A. I think so. I saw he is.
Q. Do you know whether or not he was taken to the asylum?
A. I heard of it.
Q. During the period from '99 to November, 1902, did Landis live with you at any time?
A. I can't remember the dates. He lived with me one winter before he proved up on the land.
Q. You know during that time he lived with Mr. Gilson?
A. Not only what he told me. He said Mr. Gilson——

Objection by Mr. Luse upon the part of the defendant to any statement Landis made as to what Gilson said, or any statements made by Landis.

Q. You may state, Mr. Brooks, if you personally have any knowledge from your observation up there whether or not Landis lived with Mr. Gilson at any time?
A. I don't know.
Q. What is the character of the house that was on that place?
53 A. A little shack, shed roof.
Q. How long had the Landis shack been on the place?
A. Well, I can't remember. It wasn't there when I went there.
Q. Was it there in 1899?

A. Well, I don't know the date. It was there when Mr. Landis came there.

Q. It was there when Landis entered?

A. Yes. When he came to the country, I know that.

Q. What is the nature of the building? How does it look?

A. It is an old building, an old shed roof small house.

Q. Is it a two-slanted roof or kind of a lean-to roof with one slant?

A. One slant.

Q. It is a shed roof?

A. Shed roof is what I call it.

Q. Shingled or boarded?

A. Well, I can't say. I can't say which it is.

Q. How much of the land around there has been improved?

A. Quite a little grubbed off there.

Q. Any improvement except grubbing?

A. I am positive there was before Landis proved up some ploughing and fencing there.

Q. Before Landis proved up?

A. Yes, because Mr. Gilson come to my place and got Landis, and he went up there and stayed a day or two, and after
54 that I went up and they was ploughing and wheat sown after they proved up.

Q. After they proved up?

A. What I mean, Landis told me——

Q. That isn't the question. Do you know what improvement was there before November 21, 1902. I mean in the way of improving the land itself, ploughing, cultivating, grubbing?

A. I know they went up there to do some work on the land, and that was before they proved up. I know that Mr. Landis told me that.

Mr. AVERY: I move to strike the witness' answer as hearsay and not responsive.

Q. What did Mr. Landis do with the sagebrush that he grubbed out of his claim?

A. He used it for fuel there.

Q. Before he proved up?

A. Yes, he used sagebrush for fuel.

Cross-examination.

(By Mr. LUSE:)

Q. Were you ever in the house, Mr. Brooks?

A. No, I never was in the house while Landis lived there, but I sat on my horse at the door one time.

Q. Never examined it on the inside?

A. No, not at that time.

55 [*Deposition of D. T. Meyer for the Plaintiff.*]

D. T. MEYER, called, sworn, and testified as follows on behalf of the plaintiff:

Direct examination.

(By Mr. AVERY:)

Q. What is your name?
A. D. T. Meyer.
Q. Where do you reside?
A. I reside in East Selah Valley, about four miles out, maybe a little less than that from Yakima Avenue.
Q. How long have you lived there?
A. I lived there a little bettter than six years.
Q. Where did you reside in 1901 and 1902?
A. Well, I moved out of town here and went out there, and have been there six years or a little better.
Q. Are you familiar with the land I have described here as being the land involved in this case?
A. What do you mean, the Landis tract there?
Q. Yes.
A. Well, I have been over it a few times.
Q. Have you been over it enough to know about these conditions prior to November 21, 1902?
A. The first time I was on that tract of land was in 1897, I think. It was in the summer.
Q. Well, were you on it thereafter?
A. A few times, yes, sir.
Q. Between that time and 1902, November 21st?
A. I rode across it a time or two.
Q. Do you know its condition as to being under cultivation?

56 A. Well, all I noticed about it the land practically was in its raw state. It looked as though some brush had been pulled, grubbed, or something, around the little shack there.
Q. How much?
A. Oh, I presume two or three acres or something, I would judge.
Q. Any of it been ploughed prior to November 21, 1902, at the time Landis proved up?
A. If it had been it was very old ploughing, I think. If there had been ploughing there it had grown up to some new sagebrush. That is my memory up to that time.
Q. What was the condition of the house, was it an old house or a new one?
A. Well, it looked as though it had been there for a number of years to look at it, I would judge, yes, sir.
Q. Did you ever see Landis there?
A. Never did.
Q. Ever see anybody there?

A. Never did, except I and Mr. Brooks and Mr. Sheets rode across there. There was a county road across there.

Q. Was it occupied the times you passed there and saw it? Was the place occupied the time you passed there and saw it?

A. I don't know whether it was or not.

Q. Couldn't you tell whether it was occupied?

A. I didn't see any one around the house.

Q. Did you see any tools or farming equipment?

A. I did not.

57 Q. Did you see anything that indicated it was occupied?

A. I did not.

Q. Did you ever talk with Mr. Gilson about the place?

A. I think only once.

Q. Well, make it short. Did he ever say anything to you about owning the place?

A. No, I don't think he ever did. I told him once—we had a little dispute over some money, and I told him he had got that land fraudulently, and he turned off and walked from me and wouldn't answer me, and that is about the only conversation I have had with Mr. Gilson in regard to the land.

Cross-examination.

(By Mr. LUSE:)

Q. Now, Mr. Meyer, you say you were across the land first in '97?

A. Yes, I think it was '97.

Q. Well, when were you across it next after that?

A. Oh, pretty near every year since.

Q. Pretty near every year since?

A. Yes, sir.

[*Deposition of Fred Seymor for the Plaintiff (Recalled).*]

FRED SEYMOR, recalled on behalf of the plaintiff, and further testified as follows:

(Mr. AVERY:)

Q. Mr. Seymor, did defendant Gilson ever say to you he acquired this shack, this Landis building—shack?

A. No, sir.

58 [*Deposition of Chas. A. Bryant for the Plaintiff (Recalled).*]

CHAS. A. BRYANT, recalled on behalf of the plaintiff, and further testified as follows:

(Mr AVERY:)

Q. Mr. Bryant, did defendant Gilson ever tell you anything about how he acquired that building, the Landis shack?

A. He said that he had bought it from the parties that had filed on the place once before and had went away and left it, or abandoned their place.

Q. When did he tell you that?
A. At the time we had our conversation.
Q. Was that before he proved up, Landis proved up?
A. Yes, sir.

[*Proceedings Relative to Introduction of Certain Exhibits in Evidence.*]

Mr. AVERY: I introduced in evidence, Mr. Examiner, some attached papers, being a Homestead Application to be designated and marked as Plaintiff's Exhibit "1"; a Receiver's Duplicate Receipt to be designated and marked as Plaintiff's Exhibit "2"; a Non-Mineral Affidavit to be designated and marked as Plaintiff's Exhibit "3"; Homestead Affidavit to be designated and marked as Plaintiff's Exhibit "4"; Reeciver's Receipt to be designated and marked as Plaintiff's Exhibit "5"; Homestead Application No. 1, to be designated and marked as Plaintiff's Exhibit "6"; Notice for Publication to be designated and marked as Plaintiff's Exhibit "7";
59 Affidavit of Publication to be designated and marked as Plaintiff's Exhibit "8"; Certificate as to Posting of Notice to be designated and marked as Plaintiff's Exhibit "9"; Affidavit required of Claimant to be designated and marked as Plaintiff's Exhibit "10"; Non-mineral Affidavit to be designated and marked as Plaintiff's Exhibit "11"; Homestead Proof, Testimony of Witnesses to be designated and marked as Plaintiff's Exhibit "12"; Receiver's Receipt to be designated and marked as Plaintiff's Exhibit "13," and Register's Receipt to be designated and marked as Plaintiff's Exhibit "14."

It is stipulated that the package, being Exhibits 1 to 14 inclusive, are true copies of the originals as they are on file in the office of the General Land Office in Washington, D. C., and in the Department of the Interior, and they may be considered as and have the same effect as originals.

It is stipulated that the taking of evidence and depositions on the part of the plaintiff shall be continued until some future date, when the hearing will be resumed on the plaintiff's giving five days' notice.

In the District Court of the United States for the Eastern District of Washington, Eastern Division.

UNITED STATES OF AMERICA, Complainant,
vs.
SILAS A. GILSON, Defendant.

60 *Depositions of C. A. Bryant, D. T. Meyers, R. A. Grant and Joseph H. Lancaster.*

Pursuant to a stipulation by and between the above-named parties in the above-entitled cause, heretofore filed in said cause, *and* taking of testimony on behalf of the complainant was resumed on

September 25th, 1908, at the hour of ten o'clock A. M., before me, Edward E. Cleaver, Special Examiner, at North Yakima, Washington. Joseph B. Lindsley, Deputy United States Attorney for said district, appeared on behalf of complainant, and Cull, Luse & Davis appeared on behalf of defendant, and the following proceedings were had, to wit:

[*Deposition of C. A. Bryant for the Complainant.*]

C. A BRYANT, called, sworn, and testified as follows on behalf of complainant:

Direct examination.

(By Mr. LINDSLEY:)

Q. Mr. Bryant, you testified in this case once before, on August 22d, 1908?

A. Yes, sir.

Q. And in the course of your examinations you were asked about conversations had with Mr. Gilson and Mr. Landis, and in reading your answer it is not altogether certain what you meant, or what you said. You testified that you had a conversation with Mr. Gilson in which you asked him about this land that Mr. Landis had filed upon?

A. Yes, sir.

Q. And whether or not it could be bought?

A. Yes, sir.

61 Q. Now, in your answer you say that Mr. Gilson said that it was Mr. Landis' and he could not—that he owned the building and was going to get the land?

A. That is what he told me.

Q. What do you mean by that, that Mr. Gilson owned the building and Mr. Landis the land?

A. Mr. Gilson owned the building and Landis the land and had agreed to sell it to Mr. Gilson.

Q. That is the conversation you testified to as having had with Mr. Gilson in March, 1902?

A. Yes, sir.

Q. Did you ever have a conversation with Mr. Landis?

A. No, sir, never saw the man.

Q. Never saw him?

A. No, that is, to know him.

Q. Did you have any other conversation with Mr. Gilson, or hear Mr. Gilson in conversation with anybody else, except this one time?

A. No, sir, that is the only time.

Q. In that conversation Mr. Gilson told you he owned the building?

A. Yes, sir.

Q. And that he had an arrangement with Landis by which he was going to get the land?

A. Yes, sir.
Q. What, if anything, did Mr. Gilson say to you about having agreed to furnish Mr. Landis with the money to prove up?
A. He didn't say anything of that kind to me at all.
Q. He did not?
A. No.

62 Cross-examination.

(By Mr. LUSE:)

Q. You testified, Mr. Bryant, in your former testimony that Mr. Gilson said he was going to get the land, and that was all he ever said about it?
A. Yes, sir.
Q. That was right?
A. Yes, sir.

Redirect examination.

(By Mr. LINDSLEY:)

Q. You say Mr. Gilson told you he owned the building?
A. Yes, sir.
Q. That was the building that was on the homestead?
A. Yes, sir, at that time.
Q. And that Mr. Gilson was going to get the homestead?
A. Yes, sir.

[*Deposition of D. T. Meyers for the Complainant.*]

D. T. MEYERS, called, sworn, and testified as follows on behalf of the complainant:

Direct examination.

(By Mr. LINDSLEY:)

Q. Mr. Meyers, you testified in this case before, haven't you?
A. Yes, sir.
Q. On August 22d?
A. Yes, sir, I think that is the date. I am not positive.
Q. You knew Mr. Landis, Mr. Meyers, did you?
A. Yes, sir.
Q. How long did you know him?
A. I have known him for a couple of year-, I guess.
Q. About when was that?
63 A. Well, sir, I am a poor hand to remember dates, but then it has been——
Q. Along about 1901 or 1902?
A. '01, '02 or '03, along like that, yes, sir.
Q. Of course you testified and remember the case of his settling on this land out there, or proving up on it?
A. Yes, sir, I was living up there within about three miles of him at that time.

Q. You knew him pretty well, did you?
A. Well, fairly well only, yes, sir.
Q. Did you ever have any conversation with Mr. Landis about the land?
A. Yes, sir.
Q. Did you ever have a conversation with him in which he said anything to you about getting or having taken up that land for Mr. Gilson?

To which Mr. Luse, upon the part of the defendant objects for the reason that it is leading.

A. I did.
Q. Now, relate that conversation, what, if anything, Mr. Landis said to you, where it was and about when it was?
A. The first conversation I had with Mr. Landis in regard to his land was at Brooks' house. Brooks lived up in the valley there beyond me, between me and where Landis had located this land.
Q. When was that? Do you remember about when it was?
A. It was in the summer, I think, before he proved up that Fall, if I am not mistaken. The dates I can't remember very well.
Q. Just relate the conversation?

64 Objection by Mr. Luse upon the part of the defendant to the evident proof of any statements made by Landis regarding the proving up as hearsay.

Q. Tell the conversation.
A. He told me he had filed a homestead right for Mr. Gilson; that Mr. Gilson would have to give him a hundred dollars for doing this for his trouble. He also told me after he had proved up that he had got his hundred dollars from Mr. Gilson. He told me that several times afterwards, two or three different times after he proved up that he had got the hundred dollars out of Gilson for filing the homestead right.
Q. What, if anything, did he say about Mr. Gilson furnishing the expense?
A. He told me he was furnishing all expenses, Gilson.
Q. Mr. Gilson was to furnish all expenses?
A. Paying everything, and was to get a hundred dollars for his homestead right. That is what Mr. Landis told me.
Q. How many times, Mr. Meyers, did you have a conversation with Mr. Landis in which he told you that, or in substance that?
A. Why, several times?
Q. I will ask you if during that time, or about that time, you had any conversation with Mr. Gilson?
A. In regard to the land?
Q. Yes.
A. Afterwards I think it was. I only had just a short conversation in regard to the land business.
Q. With Mr. Gilson?
A. Yes, sir.

65 Q. What, if anything, did he say?

A. It came—the way it came up, if you will allow me to express myself, was over bridge business. We was getting up money to build a bridge up here, and he had promised to put in a hundred dollars, and we went ahead and got the money made up except his, and come to a show down we tagged him for the money, and he wouldn't put it up, and I kind of flew off the handle and told him about getting this land fraudulently from the government through Landis. That is the only thing I ever said to him.

Q. What did Mr. Gilson say to you about the land?

A. He didn't open his mouth when I told him he got it fraudulently. That is, if he did I didn't hear him.

Cross-examination.

(By Mr. LUSE:)

Q. Where do you reside, Mr. Meyers?

A. I am about four mile a little east of Yakima City, right here in this town. Live out in East Selah Valley.

Q. North Yakima you mean when you say Yakima City?

A. North Yakima.

Q. Yakima City, you know, is a different place?

A. I know.

Q. And how long have you lived there?

A. I am there six year or better now.

Q. About six years?

A. Yes, sir, or better. Be seven year, I think, next March, I think, when I came there, February or March.

66 Q. How long was it after you was out there that you had this talk with Landis?

A. I can't remember the dates now. It is during the time that Landis was out there I had the conversation with him.

Q. Well, can you tell anything about how long it was?

A. Might been '01, '02, or '03, along them times, living out there then. I can't remember dates as far as the year is concerned. I couldn't be positive on it at all, I guess.

Q. 1903 or 1904?

A. Well, it was after I had moved out there that I had that conversation with him. After he had filed on the land I had a conversation with him, after he proved up.

Q. Ever have any conversation with him before he proved up?

A. Yes, sir.

Q. Did you know when he proved up?

A. I saw the ad in the paper. He advertised for proving up, and told me he was going to prove up in the mean time.

Q. But you don't know whether it was in 1901, 1902 or 1903?

A. Yes, sir, it was along about then. I couldn't say positive what year it were.

Q. It might have been as late as 1904?

A. I couldn't say positive.

Q. Might or might not it?

67 A. I don't know I told you. I don't remember dates. That is, I couldn't say positive what year it was. It was when Landis were living up there.

Q. Now, have you given in your statement the exact words Mr. Landis used?

A. As near as I can remember them, yes, sir.

Q. Can you remember them exactly?

A. Well, I talked with him on several different occasions about it, several times, yes, sir, and he told me about the same thing all the time, you know. I told him, "If you are getting shed of your homestead right you ought to get more money out of it," and he says, "I am an old man and haven't got long to live and if I get a few dollars out of it it will be that much."

Q. He simply told you he was going to get one hundred dollars?

A. Yes, sir, kind of talked childish too.

Q. Talked childish too?

A. Yes, sir, very old man.

Q. Who was present when you had these conversations, anybody?

A. Mr. Brooks was present. The first time, I think, I ever heard Mr. Landis express himself it was in Brooks' house, and I think he heard the conversation. I think he did.

Q. Was anybody present at any other conversation?

A. I don't think so. At that time there was some children and they might have been in the house.

68 Q. When did you have the first conversation with him after he proved up—where were you?

A. I met him here in town.

Q. Whereabouts?

A. He was going up Front Street. I met him right at the end of the first alley south of the avenue. I was hauling wheat into town and he were in that day, and had some blankets and a package or two with him, and I asked him to ride with me, and he says, "No, I believe I will go on. I am loaded now." I saw he was dressed up a little, looked better than common, and I made the remark, "You are looking pretty good to-day," and he says, "Yes, I just got my money out of Gilson."

Q. Is that all he said?

A. No, I talked with him a few minutes.

Q. Talked with him a few minutes about the money?

A. He told me he had bought a few new clothes and new blankets, something like that, and new shoes.

Q. That Mr. Gilson had let him have some money?

A. Mr. Gilson had paid him his money, given him the money.

Q. The one hundred dollars?

A. He didn't say.

Q. And didn't say what it was for at that time?

A. No, I don't remember that he did.

Q. When did you see him next?

69 A. I saw him probably a week or two afterwards, two or three weeks.

Q. Whereabouts?
A. On the road, passing.
Q. Have any conversation with him?
A. Yes, he rode with me a time or two back and forth.
Q. Rode with you from where?
A. Oh, coming in and out. A man comes to town once in a while.
Q. He was still living on the place?
A. What place?
Q. Where he proved up.
A. I don't know where he was living. I think he stayed at Brooks most of the time though, what I think about it.
Q. What did he say to you that time?
A. That is, when that conversation we brought in come up he would tell me about the same thing he had been telling me before.
Q. That he had got some money from Mr. Gilson?
A. Yes, sir.

Redirect examination.

(By Mr. LINDSLEY:)

Q. Well, did he tell you, as you testified in your direct examination, that this was all done in accordance with agreement previously made with Mr. Gilson, that he would take up the land for Mr. Gilson?

To which Mr. Luse upon the part of the defendant objects for the reason that it is leading.

70 A. Yes, sir, he made me understand that. His conversation led up to that very fact.
Q. In answer to Mr. Luse's question you said Mr. Landis said he got the hundred dollars from Mr. Gilson. Mr. Luse asks you if that is all he said, that he just got one hundred dollars from Mr. Gilson?
A. For the land, for his homestead right.
Q. Did he say why he got the hundred dollars from Mr. Gilson?

To which Mr. Luse upon the part of the defendant objects for the reason that it is leading.

A. It was for his homestead right that he got it.
Q. What, if anything, did he say about having had an understanding, previous understanding at the time he filed on that land that he would take it up for Mr. Gilson?

To which Mr. Luse upon the part of the defendants objects for the reason that it is leading.

A. He told me Mr. Gilson had got him to file on the land.

Recross-examination.

(By Mr. LUSE:)

Q. Did he tell you at this conversation?
A. Told me at different times and at this conversation.

Q. This conversation you are testifying to when you was on the road with him, or in town, did he say that?

A. Yes, sir, he told me this all the time.

Q. Every time he saw you?

71 A. He might not have come out that way all the time. I told him he was shedding his homestead right pretty cheap. He says, "I ain't got long to live anyway."

Q. How many times did he say that to you?

A. I don't know, several times.

Q. When did he say it first?

A. The first time he ever talked about it was—in regard to that.

Q. Yes.

A. Was at Brooks' house in the summer, if I am not mistaken, before he proved up that fall, or that winter some time.

[*Deposition of R. A. Grant for the Complainant.*]

R. A. GRANT, called, sworn, and testified as follows on behalf of the complainant.

Direct examination.

(By Mr. LINDSLEY:)

Q. Mr. Grant, where do you live?

A. I live in North Yakima.

Q. How long have you lived in Yakima County?

A. Pretty close to seventeen years.

Q. What official position do you hold here?

A. Deputy Sheriff at the present time.

Q. You were living here along in 1901, 1902 and 1903?

A. Yes, sir.

Q. Do you know the location of the land described as the east half of the northwest quarter and northeast quarter of the southwest quarter of section 20, township 14 north, range 19 east?

72 A. I do, just about, yes, sir.

Q. I will ask you whether or not along in the year 1901, 1902 and 1903 you knew a man named Landis, Daniel Landis?

A. I did, sir.

Q. I will ask you if at the same time, and along previous to the same time you knew Mr. Gilson, defendant in this suit?

A. I did.

Q. Did you know of Mr. Landis having filed a homestead entry upon the land?

A. I knew about it. He told me so himself.

Mr. LUSE: I move to strike out answer as not the best evidence and hearsay.

(By Mr. LINDSLEY:)

Q. I will ask you, Mr. Grant, if you ever had a conversation with

Mr. Landis in which he discussed or told you the circumstances under which he took up this land?

To which Mr. Luse upon the part of the defendant objects for the reason that it is hearsay, as statements of parties not in court, and as leading.

A. Yes, sir, I have had one or two conversations with Mr. Landis about the land that he had taken up.

Q. Now, in the first place, if you can recall, state where you had that conversation, about when, and relate the conversation.

To which Mr. Luse upon the part of the defendant objects for the reason that it is hearsay, as statements of parties not in court, and is leading.

A. Of course, I am a good deal like Mr. Meyers, I can't remember dates at all, but during the time he was on the land, in fact,
73 I knew the old man very well. I knew him before he went up on the land there with Mr. Gilson. One occasion that I can remember, the occasion that puts my mind plain, was on account that he left up there one time a little bit cranky about something, and I had assisted the old man once or twice a little bit in little matters, and I noticed him around the town for two or three days before I spoke to him, and I wondered the length of time he was staying in town, and I went and asked him what he was doing, and he said that he wasn't satisfied; that he had taken up a piece of land adjoining Gilson's and was working some for Mr. Gilson on Gilson's land, and there was some difficulty about the boarding matter, some difficulty about the way he was living, the board, grub, etc., and that is pretty near all the conversation I can really remember, unless some question that you might want to ask me that——

Q. What, if anything, did he say about the arrangement he had with Mr. Gilson?

To which Mr. Luse upon the part of the defendant objects for the reason that it is leading, and for the further reason that it is hearsay.

Q. That he should prove up on that land for Mr. Gilson?

A. Well, sir, as near as I can remember at present, all he said about that to me was that he, Gilson, had an arrangement that he take up this land and build this little cabin on it, and that he, Gilson, would supply him with a little money for him to do work
74 for Mr. Gilson on his land. That is as near as I can remember the conversation at the present time. Of course, I am positive that the old man said more things, because we would talk every once in a while, but can't remember a thing more than that. That is about all I can really remember at this time, that the arrangement was that he take up the land and Mr. Gilson would furnish him with grub, and he could repay Mr. Gilson back by working on Mr. Gilson's place some.

Q. Remember him saying anything about taking up the land for Mr. Gilson?

A. No, sir, I do not at the present time. I can't remember.
Q. Ever have a talk with Mr. Gilson about this matter?
A. I did.
Q. Ever have any conservation in which Mr. Gilson told you anything about this Landis land?
A. No, no, not any more than here about a month of six weeks ago Mr. Gilson came and asked me if I remembered the case, and I told him I remembered the old man very well, and he says, "We might want you as a witness some time." That is all Mr. Gilson said that I can remember.

Cross-examination.

(By Mr. LUSE:)

Q. You had conversation with Mr. Landis about this land after he proved up, did you not?
A. I know I had conversation with him, but whether I did about the land, Mr. Luse, I can't remember that. The reason I had
75 a conversation that I can remember well, we took the old man, for he was very feeble, to the hospital, and afterwards I had a considerable to do to take him to Medical Lake, as he was adjudged insane, but he was then in such a condition that he wasn't—he might say something and not mean it, and I don't remember anything about the land.
Q. Didn't Mr. Landis state to you in some of these conversations that he expected to keep that land and make a home of it?
A. I would hate to answer the question because I can't remember it well, now. No, I can't answer it.

[*Deposition of Joseph H. Lancaster for the Complainant.*]

JOSEPH H. LANCASTER, called, sworn, and testified as follows on behalf of the complainant.

Direct examination.

(By Mr. LINDSLEY:)

Q. Your name is Joseph H. Lancaster?
A. Yes, sir.
Q. Where do you reside, Mr. Lancaster?
A. Selah Valley.
Q. How long have you lived in this county?
A. Well, I have been here about seven years this last time.
Q. I will ask you if you know the location of the east half of the northwest quarter and northeast quarter of the southwest quarter of section 20, township 14 north, range 19 east?
A. I do.
76 Q. I ask you whether or not that is the land that was filed upon as a homestead by Daniel Landis?
A. I have understood so, yes, sir.

Q. You were familiar with that land in 1901 and 1902, along about that time?

A. No, sir. I was in the fall of 1902.

Q. Fall of 1902?

A. Yes, sir.

Q. Did you know Mr. Landis about that time?

A. I never met the gentleman.

Q. Never met Mr. Landis?

A. No, sir.

Q. How familiar were — with that land in the fall of 1902?

A. I had a homestead adjoining it, the southwest quarter of section 20.

Q. Joined the land——

A. Landis, yes, sir; that is, it cornered the Landis place.

Q. When did you first go on to your homestead?

A. I think I filed in November, 1902.

Q. After that time how frequently were you on your place?

A. Well, I was there off and on. I never lived on the place. I put in a couple of dry crops and a couple of buildings on it, and there off and on for about eighteen months, I think, something like that.

Q. Now, what opportunity did you have, or what knowledge did you obtain about the land that Landis owned. Were you over it?

A. Frequently crossed it. About half the time I went across that way. Always went across on foot. I lived in West Selah
77 and this is in East Selah. Probably about half the time I crossed this Landis piece.

Q. And you were familiar with it from the fall of 1902 and for about eighteen months thereafter?

A. Well I was up till 1904.

Q. Now, Mr. Lancaster, I wish you would tell what, if any improvements were upon the land when you first saw it?

A. There was only a cabin.

Q. Only a cabin?

A. Yes, sir.

Q. What, if any, portion of the land had been cultivated, or prepared for cultivation?

A. None whatever at first.

Q. Now, during the period you were familiar with the land, from the fall of 1902 and till 1904, what was the condition of the land as to being cultivated or prepared for cultivation?

A. I think in 1903 there was some ploughing done on it and a crop put in, and in 1904. I think I can—(referring to note-book), in 1904 was the second crop.

Q. How large a crop?

A. Well, I think there was perhaps about three acres, in the neighborhood of that. Maybe two or three acres.

Q. No more than that much land prepared for cultivation?

A. No, sir, I don't think so. Not to exceed three acres.

Q. When had the ploughing been done for that crop?

78 A. I think it was in the spring of 1903 or in the fall of 1904. I wouldn't be positive about that. I think it was in the spring of 1903.

Q. You say that was the second crop in 1904?

A. Yes, sir, 1904.

Q. What did the crop consist of?

A. It was wheat.

Q. What was in the previous year?

A. I think it was the same.

Q. First crop?

A. The first year it didn't do any good, and the second year, 1904, there was a pretty fair crop on it.

Q. Had there been any cultivation on that land prior to 1903?

A. No, sir.

Q. None at all?

A. None whatever.

Q. I will ask you, Mr. Lancaster, if you know Mr. Gilson, the defendant in this suit?

A. I do.

Q. Did you know him at that time?

A. We was born in about a mile and a half of each other.

Q. I will ask you if Mr. Gilson ever had any conversation with you in which he told you anything about this Landis homestead?

A. Landis?

Q. About the Landis homestead?

A. Yes, sir.

Q. State when that conversation was, where it was and what it was.

A. (Referring to note-book.) That was on May 22d, 1904, at my place in West Selah.

79 Q. What, if anything, did Mr. Gilson say to you at that time about the Landis homestead?

A. Mr. Gilson, he came to my place, came over there afoot. It is about three miles, I think, from where he lived to the place I had rented, and he wanted to buy my piece.

Q. What do you mean by my piece?

A. Well. the southeast quarter of section 20 joining Landis. He told me he had the half section and wanted to buy my place, and a man named Stever had the northeast quarter of 20, and he made me an offer, but the offer now, I can't state whether it was $150.00 or $250.00——

Objection by Mr. Luse upon the part of the defendant to any statements to a conversation relating to matters between he and Mr. Gilson.

A. —Well, he told me that he had half a section and that he would buy mine, providing I proved up on it——

Motion by Mr. Luse upon the part of the defendant to strike out as immaterial.

A. —that he would furnish me the money to prove up and give me $150.00—now I wouldn't be positive whether it was $150.00

or $200.00 for my piece; that he would do the same with me that he did with Mr. Landis.

Motion by Mr. Luse upon the part of the defendant to strike out this testimony as to offer to the witness by Gilson as incompetent and immaterial.

Q. Go ahead.

A. I told him I had no security to give him to furnish the
80 money to prove up on, and he told me he would do the same he did with Mr. Landis; that the homestead law was that every man that had a homestead could mortgage his place to prove up on it; and the offer that he made me, I wouldn't be certain whether it was $150.00 or $250.00, but whether it was wasn't sufficient and I refused to take the offer.

Q. Did he tell you what arrangement he had with Mr. Landis?

To which Mr. Luse upon the part of the defendant objects for the reason that it is leading.

A. He told me just the same as he told me there, that he would do the same with me as Landis.

Q. Did he tell you what he had done with Mr. Landis?

A. He told me that he offered him—whether he had given him $150.00 or $250.00—it was either one of the two he had given him; that he would make the same proposition to me that he had with Mr. Landis.

Q. Say anything more about how much money he had furnished Mr. Landis?

To which Mr. Luse upon the part of the defendant objects for the reason that it is leading.

A. No, sir.

Q. At the time you were out there close to this land was anybody living on the Landis homestead?

A. Why, I seen a party there several different times, but I never knew who it was and never spoke to them. Some men there—I don't know who it was.

Q. How far was it from this land to where Mr. Gilson lived?

81 A. It might not have been over—between a quarter and half a mile.

Q. Now, when you first went out there and saw this Gilson homestead what was this building that was on it?

A. Why, it was a shack roofed building.

Q. Describe the building.

A. Well, I couldn't give the exact size, and been around it a number of times too.

Q. Well, approximate size?

A. About 10 x 14 or 10 x 12, something like that.

Q. Have any idea what it was worth?

A. Well, I put up one about the same size and it cost me about $25.00 to $30.00, in the neighborhood of that.

Q. I will ask you, Mr. Lancaster, if there were any farming implements, or wagons, vehicles, or anything else out there?
A. None whatever, not on this piece.
Q. This Landis piece?
A. No.
Q. And other buildings except this little shack?
A. That is all.
Q. Were you ever up to it?
A. Oh, yes, been around it a good many times——
Q. Ever in it——
A. —because I took a man over there by the name of Dougherty on (referring to book) January 19th, 1903. We went over there and looked over the place. He was going to contest the property at the time, and he made a very close examination of it.
Q. You were with him when he made it?
A. I was, yes, sir.
82 Q. In the building at that time?
A. In the building.
Q. Yes.
A. No, sir.
Q. Look in it?
A. No, sir.
Q. Well, you say you made a close examination at that time. What was the condition then?
A. In 1903.
Q. Yes.
A. January 19th there wasn't anything but the building. The ploughing might have been done, but I don't think so.
Q. Don't think there was anything there but the building?
A. No, sir.
Q. No cultivation of any kind?
A. No, sir.
Q. Any preparation for the land for cultivation?
A. No, sir, wasn't ever fenced at that time.
Q. Any well there?
A. No, sir.
Q. Anybody live there when you were there making that investigation?
A. No, sir.
Q. Describe the building as being on a foundation or not.

Objection by Mr. Luse upon the part of the defendant as to any testimony about this building as not within the issues made by plaintiff.

Q. Answer the question.
A. That I couldn't say. I never took notice about the foundation.
Q. Give any signs of occupancy around there while you were there?
A. No, sir.
Q. Do you know where the building came from?

A. I couldn't say, no sir.

83 Q. You say that Mr. Gilson offered you the money to prove up on your place——

To which Mr. Luse upon the part of the defendant objects for the reason that it is incompetent and immaterial.

Q. And told you that he would do the same with you that he done with Mr. Landis?

A. Yes, sir.

Q. Did you know whether or not at that time Mr. Landis had proved up?

A. No, sir.

(Mr. LUSE:)

Q. When you say, "No, sir," do you mean you don't know?

A. I don't know. I don't know yet that he has proved up—personally.

Cross-examination.

(By Mr. LUSE:)

Q. When did you say you had this conversation with Mr. Gilson?

A. It was on May 22d, 1904.

Q. May 22d, 1904?

A. Yes, sir.

Q. Now, you say this land was about three acres sowed to wheat in 1903?

A. 1903.

Q. Do you know what time of year that was sowed?

A. No, I don't.

Q. Sowed in the spring of 1903?

A. I think so.

Q. Or fall of 1902?

A. No, in the spring. It wasn't in the fall.

Q. Probably in the spring of 1903?

A. 1903.

84 Q. When was that land prepared to sow, ploughed?

A. I think it was in the spring of 1903?

Q. Do you know that?

A. Yes, sir, I would be positive, because this man Dougherty and I was over there January 19th, 1903, and no ploughing done on the place at that time.

Q. When did you make those memorandums in the book?

A. I have a diary that I have——

Q. Just answer the question.

A. This here I copied off my diary yesterday.

Q. When did you make the original entry in your diary?

A. The dates that I have here.

Q. You are sure there wasn't ploughing there in January, 1903.

A. 1903, yes, sir.

Q. But there was a crop there in 1903, crop of wheat sowed there.

A. Yes, sir.
Q. Crop in 1904?
A. Yes, sir.
Q. There was two crops of wheat raised on that ground there?
A. I saw two crops there, yes, sir.
Q. Was there more than two crops raised?
A. There might have been more since, I don't know.
Q. Well, wasn't there any land broken or grubbed out or anything in January, 1903, when you went over it?
A. Yes, sir, in 1903 there was, because there was a crop in there.

85 Q. I mean on January 19th, 1903, when you was there there was no preparation made to sow the wheat?
A. The date I was there *in* January 19th, there wasn't.
Q. There wasn't?
A. No, sir.
Q. Then the land sowed in wheat in 1903 was grubbed and broken and put in that spring.
A. Yes, sir. There was a little bit right around the house, probably.
Q. You say you put this matter down in the books at the time?
A. Yes, sir.
Q. What object had you in making those entries at that time?
A. Well, sir, I have kept a daily diary since January 1st, 1903, up to date, every date of my transactions from January 1st, 1903, to the present date.
Q. What did you do with your homestead, prove up on it?
A. No, sir.
Q. Relinquish it?
A. I had a contest filed on it, notification of contest, and I sold out the right.
Q. When did you do that?
A. It was contested on the 17th of November, 1904, and I think it was only about—something like two or three weeks—I have got that on my ledger, I haven't got it here—that I let it go.
Q. And you let it go?
A. Yes, sir.
Q. You had not made your residence on it to defeat the contest?
A. No, sir, I hadn't, because I never lived on it with my family at all.

86 Q. You never lived on it with your family?
A. No, sir.
Q. Then at the time you say you had this conversation with Mr. Gilson you couldn't have made proof if you wanted to?
A. No, sir.
Q. Mr. Gilson was in the neighborhood and knew that?
A. Mr. Gilson ploughed my land and sowed it, if I remember it.
Q. And knew you had not lived on it?
A. He knew I lived on it, yes, sir. He knew I had not been there and put in crops, and knew the family had not lived there.

Redirect examination.

(By Mr. LINDSLEY:)

Q. Well, he wanted you to prove up on it?
A. Yes, sir.
Q. Curious how you could prove up on it under those circumstances.
A. I suppose he knew I would have to live on it with my family.

Recross-examination.

(By Mr. LUSE:)

Q. He knew you couldn't prove up on it?
A. I don't know anything about that, but know I wouldn't.

(Mr. LINDSLEY:)

Q. This was January 19th, 1903, that you were there with Mr. Dougherty on the Landis place.
A. It was January 19th, 1903.
Q. At that time, as you so testified, there was no cultivation, or preparation for cultivation?
87 A. No, sir, none whatever.
Q. Nothing there but that little shack?
A. Nothing but the shack, and probably around the door a patch not larger than this room cut off of sagebrush.

(Mr. LUSE:)

Q. That was all the land that at that time had been cleared of sagebrush?
A. January 1903, yes, sir, January 19th.
Q. How much of it had been cleared of sagebrush in 1904?
A. Well, I don't think there was any more than at present, or when I left there. I think there was about—a rough estimate I have on it—there was between two and one-half and three acres.
Q. That was all that had been cleared of sagebrush up to that time?
A. All before I lost my ranch. I haven't been over it since that time.
Q. Then at the time in 1903 and 1904, when you were familiar with it, there wasn't more at any time; more than three acres, in your judgment, that had been cleared of sagebrush?
A. Yes, sir.
Q. And that was what was ploughed?
A. Yes, sir.

[*Deposition of C. A. Bryant for the Defendant (Recalled.)*]

C. A. BRYANT, recalled on behalf of the defendant, and further testified as follows:

(Mr. LUSE:)

Q. Mr. Bryant, are you acquainted with Mrs. Earnister?

88 A. Yes, sir, I have met the lady a few times.

Q. You may state, Mr. Bryant, whether or not at one time in conversation with Mrs. Earnister, when you were coming from that country down to town, you didn't say to Mrs. Earnister that you were going to make Mr. Gilson all the trouble that you possibly could.

To which Mr. Lindsley upon the part of the complainant objects for the reason that it is not proper question, no time or place being fixed, and wholly incompetent, immaterial and irrelevant, and cannot recall a witness for the purpose of impeachment.

A. No, sir, I did not.

It is stipulated by counsel for complainant and defendant that the signatures of witnesses to their respective depositions is waived by the parties.

PLAINTIFF'S EXHIBIT 1.

(4-007.)

Application No. 2481.

Homestead.

LAND OFFICE AT NORTH YAKIMA, WASH.,
November 13th, 1899.

I, Daniel Landis, of North Yakima, Yakima County, Wash., do hereby apply to enter, under Section 2289, Revised Statutes of the United States, the E. ½ of N. W. ¼ and N. E. ¼ of S. W. ¼ of Section 20, in Township 14 North of Range 19 E., W. M., containing 120 acres.

DANIEL LANDIS.

89 LAND OFFICE AT NORTH YAKIMA, *Nov. 13th,* 1899.

I, Walter J. Reed, Register of the Land Office, do hereby certify that the above application is for Surveyed Lands of the class which the applicant is legally entitled to enter under Section 2289, Revised Statutes of the United States, and that there is no prior valid adverse right to the same.

[Seal of Land Office.]

WALTER J. REED, *Register.*

1682 b-25m.

[Endorsed:] Homestead Application No. 2481. Daniel Landis, U. S. Land Office, North Yakima, W. November 13, 1899. Section 20, Town. 14 North Range 19 E., W. M. 9-103.

PLAINTIFF'S EXHIBIT 2.

(4-138.)

Receiver's Duplicate Receipt No. 2481, *Application No.* 2481.

Homestead.

RECEIVER'S OFFICE, N. YAKIMA, WN., *Nov.* 13, 1899.

Received of Daniel Landis the sum of Nineteen dollars No cents; being the amount of fee and compensation of Register and Receiver for the entry of E. ½ N. W. ¼ & N. E. ¼ S. W. ¼ of Section 20 in Township 14 N. of Range 19 E., W. M., under Section 2290, Revised Statutes of the United States.

$19.00. MILES CANNON, *Receiver.*

90 NOTE.—It is required of the homestead settler that he shall reside upon and cultivate the land embraced in his homestead entry for a period of five years from the time of filing the affidavit, being also the date of entry. And abandonment of the land for more than six months works a forfeiture of the claim. Further, within two years from the expiration of the said five years he must file proof of his actual settlement and cultivation, failing to do which, his entry will be canceled. If the settler does not wish to remain five years on his tract he can, at any time after six months, pay for it with cash or land-warrants, upon making proof of settlement and cultivation from date of filing affidavit to the time of payment.

PLAINTIFF'S EXHIBIT 3.

4-062.

Non-Mineral Affidavit.

This affidavit can be sworn to only on personal knowledge, and can not be made on information and belief.

The Non-Mineral Affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE,
NORTH YAKIMA, WASH., *November* 13, 1899.

Daniel Landis, being duly sworn according to law, deposes and says that he is the identical Person who is an applicant for
91 Government title to the East half of Northwest quarter and Northeast quarter of Southwest quarter Sec. 20, Tp. 14 N.,

R. 19 E., W. M.; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that the land contains no salt spring, or deposits of salt in any form sufficient to render it chiefly valuable therefor; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially non-mineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes; that the said land is not occupied and improved by any Indian, and that his post-office address is North Yakima, Yakima County, Wash.

DANIEL LANDIS.

92 I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known (or has been satisfactorily identified before me by Mr. Gilson), and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in North Yakima, Wash., within the North Yakima land district, on this 13th day of November, 1899.

WALTER J. REED, *Register.*

NOTE.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full exent of the law.

Revised Statutes of the United States, Title LXX—Crimes, Chap. 4.

SEC. 5392. Every person who, having taken an oath before a competent tribunal, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more
93 than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

PLAINTIFF'S EXHIBIT 4.

4063.

Homestead Affidavit.

UNITED STATES LAND OFFICE AT NORTH YAKIMA,
November 13th, 1899.

I, Daniel Landis, of North Yakima, Wash., having filed my application No. 2481, for an entry under section 2289, Revised Statutes of the United States, do solemnly swear that I am not the proprietor of more than one hundred and sixty acres of land in any state or Territory, that I am* A native born citizen of the United States, Seventy-one years of age, Unmarried; that my said application is honestly and in good faith made for the purpose of actual settlement and cultivation, and not for the benefit of any other person, or corporation, and that I will faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence, and cultivation necessary to acquire title to the land applied for; that I am not acting as agent of any person, corporation, or syndicate in making such entry, nor in collusion with any person, corporation or syndicate to give them the benefit of the land entered,
or any part thereof, or the timber thereon, that I do not
94 apply to enter the same for the purpose of speculation, but
in good faith to obtain a home for myself, and that I have not directly or indirectly made, and will not make, any agreement or contract in any way or manner, with any person or persons, corporation, or syndicate whatsoever, by which the title which I might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except myself, and further, that since August 30th, 1890, I have not entered under the land laws of the United States, or filed upon, a quantity of land, agricultural — character, and not mineral, which, with the tracts now applied for, would make more than three hundred and twenty acres,

None

and that I have not heretofore made any entry under the homestead laws,

None.

(Sign plainly with full Christian name,)

DANIEL LANDIS.

Sworn and subscribed before me this 13th day of November, 1899, at my office at North Yakima in Yakima County, Wash.

WALTER J. REED, *Register.*

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*Here insert statement that affiant is a citizen of the United States, or that he has filed his declaration of intention to become such, and that he is the head of a family, or is over twenty-one years of age,
as the case may be. It should be stated whether applicant
95 is a native born or not, and if not, certified copy of his certificate of naturalization or declaration of intention, as the case may be, must be furnished.

PLAINTIFF'S EXHIBIT 5.

4-137.

Receiver's Receipt No. 2481, *Application No.* 2481.

Homestead.

RECEIVER'S OFFICE, NORTH YAKIMA, WN.,
Nov. 13, 1899.

Received of Daniel Landis the sum of Nineteen dollars No cents; being the amount of fee and compensation of Register and Receiver for the entry of E. ½ N. W. ¼ & N. E. ¼ S. W. ¼ of Section 20 in Township 14 N. of Range 19 E., W. M., under Section 2290, Revised Statutes of the United States.

MILES CANNON,
Receiver.

$19.00.

NOTE.—It is required of the homestead settler that he shall reside upon *the* cultivate the land embraced in his homestead entry for a period of five years from the time of filing the affidavit, being also the date of entry. An abandonment of the land for more than six months works a forfeiture of the claim. Further, within two years from the expiration of the said five years he must file proof of his actual settlement and cultivation, failing to do which, his entry will be canceled. If the settler does not wish to remain five
96 years on his tract, he can, at any time after fourteen months pay for it with cash or land warrants, upon making proof of settlement and of residence and cultivation from date of filing affidavit to the time of payment.

PLAINTIFF'S EXHIBIT 6.

(4-348.)

No. 1—Homestead.

LAND OFFICE AT NORTH YAKIMA, WASH.,
Oct. 15, 1902.

I, Daniel Landis, of North Yakima, Wash., who made Homestead Application No. 2481 for the E. ½ of N. W. ¼ & N. E. ¼ of S. W. ¼, Sec. 30, Tp. 14 N. R. 19 E. do hereby give notice of my intention to make final proof to establish my claim to the land above described, and that I expect to prove my residence and cultivation before Register & Receiver U. S. Land Office at North Yakima, Wash., on Friday, Nov. 21, 1902 by two of the following witnsses:

Wenzel Maywald, of North Yakima, Wash.
William Sheets, of North Yakima, Wash.
Frederick Seymour, of North Yakima, Wash.
Frank Hood, of North Yakima, Wash.

DANIEL LANDIS.
(Signature of Claimant.)

LAND OFFICE AT NORTH YAKIMA, WASH.,
October 15th, 1902.

Notice of the above application will be published in the Yakima Republic printed at North Yakima, Wash., which I hereby
97 designate as the newspaper published nearest the land described in said application.

HENRY V. HINMAN,
Register.

NOTICE TO CLAIMANT.—Give time and place of proving up and name the title of the officer before whom proof is to be made; also give names and post-office address of four neighbors, two of whom must appear as your witnesses.

PLAINTIFF'S EXHIBIT 7.

Notice for Publication.

No. 2481.

DEPARTMENT OF THE INTERIOR,
LAND OFFICE AT NORTH YAKIMA, WASH.,
October 15, 1902.

Notice is hereby given that the following named settler has filed notice of his intention to make final proof in support of his claim and that said proof will be made before Register and Receiver at the North Yakima land office, on Friday, November 21st, 1902, viz: Daniel Landis of North Yakima, Wash., for the E. ½ of NW. ¼ and NE. ¼ of SW. ¼ section 20, township 14 north, range 19 east, W. M. He names the following witnesses to prove his continuous residence upon and cultivation of said land, viz: Wenzel Maywold, William Sheets, Frederick Seymour, Frank Hood all of North Yakima, Wash.

HENRY V. HINMAN, *Register.*

98 PLAINTIFF'S EXHIBIT 8.

Affidavit of Publication.

STATE OF WASHINGTON,
County of Yakima, ss:

I, W. W. Robertson, being duly sworn, on oath, depose and say that I am Editor and Publisher of The Yakima Republic, a weekly newspaper published at North Yakima, in said county and state, and of general circulation in said county and state; that the notice hereunto appended, which is a [Summons by Publication Sheriff's

Notice of Sale of Real Estate]* Notice for Publication was printed and published in said newspaper for six successive weeks, as follows:

First publication, Friday, Oct. 17, 1902.
Second publication, Friday, Oct. 24, 1902.
Third publication, Friday Oct. 31, 1902.
Fourth publication, Friday Nov. 7, 1902.
Fifth publication, Friday, Nov. 14, 1902.
Sixth publication, Friday, —.
Seventh publication, Friday, —.

—and that said notice was published in said newspaper and not in a supplement each and all of the times above mentioned.

W. W. ROBERTSON.

Subscribed and sworn to before me this 14th day of Nov., 1902.

HENRY V. HINMAN,
Notary Public, Residing at North Yakima, Wash., Register.

99 PLAINTIFF'S EXHIBIT 9.

4–227.

Certificate as to Posting of Notice.

DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE
AT NORTH YAKIMA, WASH., *Nov.* 21, 1902, *190–*.

I, Henry V. Hinman, Register, do hereby certify that a notice, a printed copy of which is hereto attached, was by me posted in a conspicuous place in my office for a period of thirty days, I having first posted said notice on the 15th day of October, 1902.

HENRY V. HINMAN, *Register.*

PLAINTIFF'S EXHIBIT 10.

(4–069.)

[To be used in cases of commuted homestead entries. For taking the testimony of Claimant and his witnesses in making commutation proof, use the prescribed forms for "Homestead Proof."]

Affidavit Required of Claimant.

(Section 2301 of the Revised Statutes of the United States.)

I, Daniel Landis, claiming the right to commute, under Section 2301 of the Revised Statutes of the United States my homestead entry No. 2481, made upon the E. ½ of NW. ¼ and NE. ¼ of

[* Words enclosed in brackets erased in copy.]

SW. ¼ section Twenty, township Fourteen North range
100 Nineteen East, W. M., do solemnly swear that I made settlement upon said land on the Thirteenth day of November, 1899, and that since such date, to wit: on the 13 day of November, 1899 I have built a house on said land and have continued to reside therein up to the present time; that I have broken about 13 acres and cultivated three acres of said land, and that no part of said land has been alienated, except as provided in Section 2288 of the Revised Statutes, but that I am the sole bona fide owner as an actual settler.

I further swear that I have not heretofore perfected or abandoned an entry made under the homestead laws of the United States, none.

[Sign plainly with full Christian name.]

DANIEL LANDIS.

Subscribed and sworn to before me this twenty-first day of November, 1902, at my office at North Yakima, in Yakima County, Washington.

HENRY V. HINMAN.

PLAINTIFF'S EXHIBIT 11.

4–062.

Non-mineral Affidavit.

This affidavit can be sworn to only on personal knowledge, and cannot be made on information and belief.

The Non-Mineral Affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

101 DEPARTMENT OF THE INTERIOR,
UNITED STATES LAND OFFICE,
NORTH YAKIMA, WASH., *Nov.* 21, 1902.

Daniel Landis, being duly sworn according to law, deposes and says that he is the identical person who is an applicant for Government title to the E. ½ of NW. ¼ and NE. ¼ of SW. ¼, Sec. 20, Tp. 14 N., R. 19 E., W. M.; that he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that the land contains no salt spring, or deposits of salt in any form sufficient to render it chiefly valuable therefor; that

no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially non-mineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes; [that the said
102 land is not occupied and improved by any Indian,]* and that his post-office address is North Yakima, Yakima County, Wash.

DANIEL LANDIS.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known [(or has been satisfactorily identified before me by —— ——),]* and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in North Yakima, within the North Yakima, Wash. land district, on this 21 day of November, 1902.

HENRY V. HINMAN, *Register.*

NOTE.—The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law:

Revised Statutes of the United States. Title LXX, Crimes, Chap. 4.

SEC. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath states or subscribes
103 any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

[* Words enclosed in brackets erased in copy.]

PLAINTIFF'S EXHIBIT 12.

(4–369.)

Homestead Proof—Testimony of Witness.

WENZEL MAYWOLD, being called as witness in support of the Homestead entry of Daniel Landis for E. ½ of NW. ¼ and NE. ¼ of SW. ¼, Sec. 20, Tp. 14 N., R. 19 E., W. M., testifies as follows:

Ques. 1. What is your name, age and postoffice address?

Ans. Wenzel Maywold, age 71 years, P. O. North Yakima, Wash.

Ques. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. I am well acquainted with the claimant and the land.

Ques. 3. Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

Ans. It is not.

Ques. 4. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal, or mineral land.

104 Ans. It is dry sage brush land good for farming if water to irrigate with.

Ques. 5. When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

Ans. Claimant settled upon the land and established his residence upon the land on Nov. 13, 1899, a house was built on the land and he bought it from a former occupant.

Ques. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

Ans. Claimant is not married. He has resided on the land continuously since Nov. 13, 1899.

Ques. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. He made his home continuously upon the land working some in the vicinity of the land to earn a living.

Ques. 8. How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

Ans. He has about 13 acres cleared, cultivated about 3 acres for 3 seasons.

Ques. 9. What improvements are on the land, and what is their value?

Ans. House, about 3 acres fenced, 13 acres cleared, chicken-house, corrals, etc., value 250.00.

105 Ques. 10. Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. No signs of any minerals only good for farming when water to irrigate with.

Ques. 11. Has the claimant mortgaged, sold, or contracted to sell, any portion of said homestead?

Ans. Not to my knowledge.

Ques. 12. Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. I am not interested. The settler has acted in good faith.

(Sign plainly with full Christian name.)

WENZEL MAYWOLD.

I hereby certify that the foregoing testimony was read to the witness before being subscribed and was sworn to before me this 21 day of November, 1902, at my office at North Yakima, in Yakima County, Wash.

HENRY V. HINMAN, *Register.*

(The testimony of witnesses must be taken at the same time and place and before the same officer as claimant's final affidavit. The answer must be full and complete to each and every question asked, and officers taking testimony will be expected to make no mistakes in dates, description of land, or otherwise.)

106 (4–369.)

Homestead Proof—Testimony of Witness.

WILLIAM SHEETS, being called as witness in support of the Homestead entry of Daniel Landis for E. ½ of N. W. ¼ and N. E. ¼ of S. W. ¼, Sec. 20, Tp. 14 N., R. 19 E., W. M., testifies as follows:

Ques. 1. What is your name, age, and postoffice address?

Ans. William Sheets, age 45 years, P. O. North Yakima, Yakima County, Wash.

Ques. 2. Are you well acquainted with the claimant in this case and the land embraced in his claim?

Ans. Am well acquainted with the claimant and the land.

Ques. 3. Is said tract within the limits of an incorporated town or selected site of a city or town, or used in any way for trade or business?

Ans. It is not.

Ques. 4. State specifically the character of this land—whether it is timber, prairie, grazing, farming, coal, or mineral land.

Ans. It is dry sagebrush land, good for farming when water to irrigate with.

Ques. 5. When did claimant settle upon the homestead, and at what date did he establish actual residence thereon?

Ans. Claimant settled upon the land on Nov. 13, 1899, he established his residence upon the land on Nov. 13, 1899.

107 Ques. 6. Have claimant and family resided continuously on the homestead since first establishing residence thereon? (If settler is unmarried, state the fact.)

Ans. Settler is not married, resided and made his home continuously upon the land from Nov. 13, 1899, to the present time.

Ques. 7. For what period or periods has the settler been absent from the land since making settlement, and for what purpose; and if temporarily absent, did claimant's family reside upon and cultivate the land during such absence?

Ans. He made his home and resided upon the land continuously since Nov. 13, 1899, never absent on at work for a day or two at any time in the vicinity of the land.

Ques. 8. How much of the homestead has the settler cultivated, and for how many seasons did he raise crops thereon?

Ans. Cultivated about 3 acres for 3 seasons, could not get water to irrigate the land.

Ques. 9. What improvements are on the land, and what is their value?

Ans. House, chicken-coop, 3 acres fenced, 13 acres cleared ready for cultivation. Value $250.00.

Ques. 10. Are there any indications of coal, salines, or minerals of any kind on the homestead? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. No signs of any minerals, only valuable for farming when water can be got to irrigate with.

Ques. 11. Has the claimant mortgaged, sold, or contracted to sell, any portion of said homestead?

108 Ans. Not to my knowledge.

Ques. 12. Are you interested in this claim; and do you think the settler has acted in entire good faith in perfecting this entry?

Ans. I am not interested. The settler has acted in good faith.

(Sign plainly with full Christian name.)

his
WILLIAM X SHEETS.
mark

I hereby certify that the foregoing testimony was read to the witness before being subscribed and was sworn to before me this 21 day of November, 1902, at my office at North Yakima, in Yakima County, Washington.

HENRY V. HINMAN, *Register.*

(The testimony of witnesses must be taken at the same time and place and before the same officer as claimant's final affidavit. The answers must be full and complete to each and every question asked, and officers taking testimony will be expected to make no mistakes in dates, description of land, or otherwise.)

(4–369.)

Homestead Proof—Testimony of Claimant.

DANIEL LANDIS, being called as a witness in his own behalf in support of homestead entry No. 2481, for E. ½ of N. W. ¼ and N. E. ¼ of S. W. ¼, Sec. 20, Tp. 14, N., R. 19, testifies as follows:

109 Ques. 1. What is your name, age, and postoffice address?

Ans. Daniel Landis, age 74 years, Postoffice address, North Yakima, Yakima County, Washington.

Ques. 2. Are you a native-born citizen of the United States, and if so, in what State or Territory were you born?

Ans. I am a native-born citizen, born in Pennsylvania.

Ques. 3. Are you the identical person who made homestead entry, No. 2481, at the North Yakima, Wash., land office on the 13 day of November, 1899, and what is the true description of the land now claimed by you?

Ans. I am the same person, E. ½ of N. W. ¼ and N. E. ¼ of S. W. ¼, Sec. 20, Tp. 14 N., R. 19 E., W. M.

Ques. 4. When was your house built on the land and when did you establish actual residence therein? (Describe said house and other improvements which you have placed on the land, giving total value thereof.)

Ans. My house was built in the spring of 1899, bought the house from the party who built it and moved in the house on Nov. 13, 1899.

Ques. 5. Of whom does your family consist; and have you and your family resided continuously on the land since first establishing residence thereon? (If unmarried, state the fact.)

Ans. I have no family, am not married. I have resided continuously on the land since Nov. 13, 1899.

110 Ques. 6. For what period or periods have you been absent from the homestead since making settlement, and for what purpose; and if temporarily absent, did your family reside upon and cultivate the land during such absence?

Ans. I have never been absent more than one or two days at any time since Nov. 13, 1899, to the present time.

Ques. 7. How much of the land have you cultivated each season, and for how many seasons have you raised crops thereon?

Ans. Cultivated about 3 acres for 3 seasons.

Ques. 8. Is your present claim within the limits of an incorporated town or selected site of a city or town, or used in any way for trade and business?

Ans. It is not.

Ques. 9. What is the character of the land? Is it timber, mountainous, prairie, grazing, ordinary agricultural land? State its kind and quality, and for what purpose it is most valuable.

Ans. It is dry sagebrush land good for farming when water to irrigate with.

Ques. 10. Are there any indications of coal, salines, or minerals

of any kind on the land? (If so, describe what they are, and state whether the land is more valuable for agricultural than for mineral purposes.)

Ans. No signs of any minerals, only good for farming if water is procured to irrigate with.

Ques. 11. Have you ever made any other homestead entry? (If so, describe the same.)

Ans. Never made any other entry of any kind.

111 Ques. 12. Have you sold, conveyed, or mortgaged any portion of the land; and if so, to whom and for what purpose?

Ans. I have not to any person or persons.

Ques. 13. Have you any personal property of any kind elsewhere than on this claim? (If so, describe the same, and state where the same is kept.)

Ans. All I own is on my homestead claim.

Ques. 14. Describe by legal subdivisions, or by number, kind of entry, and office where made, any other entry or filing (not mineral), made by you since August 30, 1890.

Ans. Never made any other entry of public land of any kind.

(Sign plainly with full Christian name.)

DANIEL LANDIS.

(In case the party is of foreign birth a certified transcript from the court records of his declaration of intention to become a citizen or of his naturalization, or a copy thereof, certified by the officer taking this proof, must be filed with the case. Evidence of naturalization is only required in final (five year) homestead cases.)

I hereby certify that the foregoing testimony was read to the claimant before being subscribed, and was sworn to before me this 21 day of November, 1902, at my office at North Yakima in Yakima County, Wash.

HENRY V. HINMAN, *Register.*

NOTE.—The officer before whom the testimony is taken
112 should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law.

Title LXX—Crime, Ch. 4.

SEC. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully and contrary to such oath, states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five

years, and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Par. 1750.)

Final Affidavit Required of Homestead Claimants.

Section 2301 of the Revised Statutes of the United States.

I, Daniel Landis, having made a Homestead entry of the E. ½ of NW. ¼ and NE. ¼ of SW. ¼ Section No. 20 in Township 14 North of Range No. 19 E., W. M., subject to entry at North Yakima, Wash., under section No. 2289 of the Revised Statutes of the United States, do now apply to perfect my claim thereto by virtue of section No. 2301 of the Revised Statutes of the United States; and
113 for that purpose do solemnly swear that I am a native citizen of the United States; that I have made actual settlement upon and have cultivated and resided upon said land since the 13 day of November, 1899, to the present time; that no part of said land has been alienated, except as provided in section 2288 of the Revised Statutes, but that I am the sole bona fide owner as an actual settler; that I will bear true allegiance to the Government of the United States; and, further, that I have not heretofore perfected or abandoned an entry made under the homestead laws of the United States, except —.

(Sign plainly with full Christian name.)

DANIEL LANDIS.

I, Henry V. Hinman, Register of the U. S. Land Office at North Yakima, Wash., do hereby certify that the above affidavit was subscribed and sworn to before me this 21 day of November, 1902, at my office at North Yakima in Yakima County, Wash.

HENRY V. HINMAN, *Register.*

[Endorsed:] 4-369. Homestead Proof, Land Office at North Yakima, Wash. Original Application No. 2481. Final Certificate Cas. 1490. Approved: Henry V. Hinman, Register. Miles Cannon, Receiver.

114 PLAINTIFF'S EXHIBIT No. 13.

Original.

No. 1490.

RECEIVER'S OFFICE AT NORTH YAKIMA,
WASHINGTON, *November* 21, 1902.

Received from Daniel Landis of Yakima County, Washington, the sum of Three Hundred dollars and no cents; being in full for the E. ½ NW. ¼ & NE. ¼ SW. ¼ of Section No. 20, in Township

No. 14 N., of Range No. 19 E., W. M., containing 120 acres and no hundredths, at $2.50 per acre.
$300.00.

MILES CANNON, *Receiver.*

$1.80 testimony fee received. Number of written words, 800 Rate per 10 words, 22½ cents. $— Commission.

PLAINTIFF'S EXHIBIT No. 14.

[4-189.]

No. 1490.

LAND OFFICE AT NORTH YAKIMA,
WASH., *Nov.* 21, 1902, *188* .

It is hereby certified that, in pursuance of law, Daniel Landis, residing at North Yakima, in Yakima County, State of Washington, on this day purchased of the Register of this Office the E. ½ of NW. ¼ and NE. ¼ SW. ¼, of Section No. 20 in Township No. 14 N., of Range No. 19 E., of the W. Principal Meridian, containing 120 acres, at the rate of two dollars and fifty cents per acre,
115 amounting to three hundred dollars and no cents, for which the said Daniel Landis has made payment in full as required by law.

Now, therefore, be it known that, on presentation of this certificate to the Commissioner of the General Land Office, the said Daniel Landis shall be entitled to receive a Patent for the lot above described.

Patent to contain reservation according to proviso to the Act of Aug. 30, 1890.

HENRY V. HINMAN, *Register.*

[Endorsed:] [4-189.] No. 1490. Cash Entry. Land Office at North Yakima, Wash. Sec. 20, Town. 14 N., Range 19 E. Patent to contain reservation according to proviso to the Act of Aug. 30, 1890. Transmitted Patent Sep. 16, 1903. To Register & Receiver. Approved June 27, 1903, by A. C. B., Clerk. Division C. Patented July 31st, 1903. Recorded Vol. 118, Page 305.

In the Circuit Court of the United States for the Eastern District of Washington.

UNITED STATES OF AMERICA, Complainant,
vs.
SILAS A. GILSON, Defendant.

Depositions of Silas A. Gilson, W. C. Feyenne, J. W. Sheets, and Vincent Maywold.

Pursuant to a stipulation by and between the above-named parties in the above-entitled cause, heretofore filed in said cause, the
116 taking of testimony on behalf of the complainant was resumed on November 16th, 1908, at the hour of ten o'clock

A. M., before me, Edward E. Cleaver, Special Examiner, at North Yakima, Washington. A. G. Avery, United States Attorney for said district, appeared on behalf of the complainant, and Cull, Luse & Davis appeared on behalf of defendant, and the following proceedings were had, to wit:

[*Deposition of Silas A. Gilson, the Defendant.*]

SILAS A. GILSON, called, sworn, and testified as follows on behalf of the defendant:

Direct examination.

(By Mr. Lust:)

Q. Mr. Gilson, you are the defendant in this case?
A. I am the defendant, one of them.
Q. You may state whether you were acquainted with Landis——
A. Yes, I was acquainted with Daniel Landis.
Q Are you acquainted with the land that is in controversy?
A. Yes, sir.
Q. How long did you know Mr. Landis before he made proof?
A. Before he made proof?
Q. Yes.
A. It was about three years.
Q. Did you know where he lived during that time?
A. Yes, sir.
Q. Where did he live?
A. On this land in dispute.
Q. Did he have any other home as far as you know during that time?
A. No.
Q. Where you present when any final proof was made?
A. No.
117 Q. Did you ever know what he or his witnesses, either one of them testified to on final proof?
A. No, not at that time, I didn't.
Q. Did you know it at any time prior to the time that you took a deed to this land—when did you first know it?
A. Well, the proof papers, I didn't know—I never saw the papers that I remember of until some of you sent a letter to Washington and got final proof papers and got them sent back.
Q. That was after this action was commenced?
A. Just during the last few months.
Q. And did you prior to that time have any knowledge as to what was testified to when he made final proof?

To which Mr. Avery upon the part of the complainant objects for the reason that it is too indefinite and a conclusion as to what he is attempting to deny, inasmuch as the final proof is not called to his attention, or what was sworn to at the final proof.

A. No, not exactly.

Q. Well, did you have any knowledge of it?

A. Well, I believe I talked to some of the parties that was going to be witnesses in the case in making proof. I talked with them to find out if the proof would be all right or not and they could testify enough to make a substantial proof of it.

Q. Well, now, did you know what the improvements were on the land at the time you talked with these parties?

A. Yes, sir.

Q. Were the statements that they made to you in accord-
118 ance with the facts as to such improvements?

To which Mr. Avery upon the part of the complainant objects for the reason that it is not shown what the statements were.

A. They were.

Q. Now, Mr. Gilson, just state what improvements there were on that land at the time proof was made?

A. There was about three acres of wheat, and there was about eight or ten acres, probably ten acres cleared outside of that, cleared of sagebrush.

Q. Was there a house of some kind on the land?

A. Yes, sir.

Q. What was it?

A. It is about—I think it is 12 x 14. I think that is the size of it.

Q. Now, Mr. Gilson, state whether or not you ever had any agreement of any kind with Mr. Landis prior to the time he made final proof that he should give you a deed of that land.

A. No, not at any time prior to or after he won.

Q. After what?

A. Not at any time.

Q. Did you ever talk with him about his selling the land to you prior to the time he made proof?

A. No.

Q. At the time that he filed on this land did you have any idea in your mind that you would get the land?

A. No.

Objection by Mr. Avery upon the part of the complainant as to what his idea was.

Q. When did you first have any talk with Mr. Landis in
119 regard to deeding you, or conveying to you the land, that is, when in relation to the time final proof was made?

A. Well, after I furnished the money for to make final proof and took a mortgage on the land the time expired on it. I took the mortgage—he thought that he could make a sale of the land and borrowed the money on the land. I didn't have the money to lend, and I had to borrow the money to lend him, and I explained to him that I didn't have the money and I couldn't lend it to him for any length of time; that I wanted him to make a sale and make a transfer of the land in some way, and I kept extending the time to get the money, and for some time after he failed to get it—why, he made the remark one day, he says, "Guess I will have to let you have the land."

Q. Were you acquainted with the values of land at that time in that neighborhood?

A. I was.

Q. How long had you lived there?

A. Well, I lived there prior to that some six or seven years.

Q. That is, you lived in the county six or seven years?

A. I lived in that neighborhood prior to that time of this here transaction between him and I six or seven years.

Q. Now, you may state what was the value of that land, according to the best of your judgment, at the time he made proof and the time you bought it.

A. Well, I think it cost me just about twice it was worth at that time.

Q. Just state what you think it was worth.

120 A. Well, I think it was worth a little more than he could sell it for. It was probably worth three hundred dollars.

Q. Mr. Gilson, do you know Charles A. Bryant, who was called as a witness for the plaintiff in this case?

A. I do.

Q. How long have you known him?

A. Well, I don't know exactly. I don't remember when I first got acquainted with him exactly.

Q. Did you know him in 1901 and 1902?

A. No.

Q. Did you have a talk with Mr. Bryant in 1901, in the spring or summer of 1901, in which you stated to him that this land was the homestead of Mr. Landis, and that you owned the building and that you were going to get the land?

A. No.

Q. Did you ever have any such conversation with him?

A. No.

Q. Did you know him at that time?

A. I didn't know him at that time.

Q. Did you know him in 1902?

A. No, I didn't know him at that time.

Q. Did you ever make any such statement to anybody?

A. No.

Q. You are acquainted with Mr. Lancaster, are you, who was a witness in this case?

A. Yes.

Q. How long have you known Mr. Lancaster?

A. Well, he was raised down in the country where I came from. I have known him since about the time I was born, I guess.

Q. You have known him for ten years?

121 A. Yes, over thirty years. He left that country when he was young, and I haven't seen much of him till I come here, since——

Q. Did you have a conversation with Mr. Lancaster in regard to buying Mr. Lancaster's land, or the land upon which he had a homestead in there?

A. Lancaster spoke to me about his land several times. He seemed

to get kind of tired trying to hold it down and wanted to sell me his relinquishment several times, or make proof of it in some kind of way and let me have it, and I told him I didn't have the money to buy his land and didn't have a right to be on the land. I told him I might find him a buyer for the land.

Q. Well, did you ever make any statement to him that you would take the land in the same way that you did Landis' land?

A. No.

Q. Did you have a talk with Mr. Seymour, who was a witness in this case, in regard to final proof, of Mr. Landis asking him to act as a witness?

A. At the time Mr. Landis made final proof, I remember he come to town with me, or come to town that day. I don't know whether he come to town with me or somebody else. Anyhow he come that day, and I seen him down to Sheets', and he said something about his witnesses there, and he spoke to me about Sheets being busy that day, and he said something about getting Seymour, and he went over to Sheets'——

Objection by Mr. Avery upon the part of the complainant if this is what Mr. Landis told him.

(Question repeated by stenographer.)

122 A. I believe I did ask him if he was going to be a witness that day for Landis.

Q. Did you tell him at that time, or any other time, you were furnishing the money, and was going to give Mr. Landis one hundred dollars?

A. No.

Q. And was getting the property?

A. No.

Cross-examination.

(By Mr. AVERY:)

Q. When did you say you got acquainted with Daniel Landis?

A. Shortly before he filed on this land.

Q. Well, that was about when?

A. Well, I would have to depend upon the date of these papers. I suppose the papers are dated right.

Q. Well, a week before, a few days before, something like that.

A. Before he filed on the land?

Q. Yes.

A. No, it was just a few days. Not more than two or three days.

Q. You got acquainted with him two or three days before he filed on the land?

A. Not more than that.

Q. Where did you get acquainted with him?

A. Here in town.

Q. Did he live in town at the time?

A. Yes.

Q. What was he doing here?

A. Why, he was working around here in town.

Q. Unmarried man, wasn't he?
A. Yes.
Q. Working by the day?
A. Yes.
Q. Had no means did he?
123 A. Well, not very much. I don't know whether he had any at all or not.
Q. You had no reason to believe he had any?
A. No.
Q. Where was he when you got acquainted with him?
A. Well, he was here in town, and I don't remember just exactly what part of the town. I don't remember about that.
Q. You don't remember just where you met him?
A. It was some place here in town.
Q. Just happened to get acquainted with him?
A. I think I was introduced to him by Sheriff Grant.
Q. How do you know it was only a few days before he made his application to enter this land?
A. Well, how does a man know anything?
Q. Well, then, you mean to say you don't know?
A. I know that as well as I know anything else.
Q. Do you mean to say that you just remember at this period of time, something like nine years, that it was two or three days before he made his entry that you got acquainted with him without anything else to remind you of it?
A. Yes, it was just a short time before I got acquainted with him.
Q. Well, you said it was not to exceed two or three days.
A. No, sir, it was not to exceed two or three days.
Q. Why do you know nine years later it was only two or three days prior to his application entry that you got acquainted with him?
124 A. Well, I know just how I come to get acquainted with him.
Q. Did you see him the day after you got acquainted with him?
A. I think I saw him every day for several days after I first got acquainted with him.
Q. Did you live here in town?
A. No.
Q. You remember that two or three days after you got acquainted with him he made his application, do you?
A. Yes.
Q. Well, how do you know that he made his application at that time?
A. Well, I know from the date of the paper.
Q. The paper?
A. Yes, I know from the—well, I think I was with him part of his movements during that time.
Q. You was with him part of his movements?
A. He come to work for me at that time.
Q. He came to work for you?
A. He came to work for me.
Q. At your home?

A. Out at my home.
Q. That is, your land?
A. He was working for me from that time on pretty well. I knew his movements pretty well.
Q. He went out two or three days before entering, went out to look at that farm?
A. Yes, he went out to look at it.
Q. He went out there and worked a day or two and then came in and made this application?
125 A. Well, he was out there and looking over some land out there. He didn't put in any time only just looking at some things there at that time for the first few days. He went out there and looked around some land, some vacant land.
Q. Did he go out with you, did you take him out?
A. I did.
Q. You took him out?
A. I took him out.
Q. Did you tell him about this particular land?
A. I told him about several pieces of land.
Q. This was among them?
A. Yes.
Q. Did he say anything about not having any money at that time?
A. Well, I don't remember whether he did or not. I am satisfied he didn't have much nohow.
Q. You advanced the money, didn't you, Mr. Gilson, for all he did?
A. I did.
Q. You paid all the money he had to pay to the Government from the time he made the application to enter until he got his patent, didn't you?
A. Well, I give him some money. I don't know whether he had any or not. I couldn't swear to that. If he did I don't think he had very much.
Q. Well, you thought you were furnishing all the money, didn't you?
A. Well, I furnished him quite a bit of money.
Q. How much did you furnish him when he made his application to enter?
A. I don't remember the figures about that. We figured up the thing and settled up. As to the exact amount I don't remember.
126 Q. Well you furnished him some the day he made his application to enter, didn't you?
A. I think the money that I give him along about that time I gave him before that time.
Q. Well, you mean you gave it to him a day or two before?
A. Yes, I think so.
Q. How much did you give him a day or two before?
A. I don't remember the exact amount.
Q. Did you take any security for it?
A. No.

Q. Then, when did you next furnish him some money?

A. Well, I don't remember exactly the time. I give him money when he wanted it. I give him money to buy groceries, and when he didn't go and get the groceries himself I bought the groceries for him and took them out there.

Q. Did you take any security for this money that you advanced?

A. No.

Q. You know how much you advanced the second time?

A. I don't remember just exactly what I advanced any time, I told you. I kept account of it, but it has been quite a while ago and I don't remember the exact amount.

Q. Have you got the account of it now?

A. No, I haven't.

Q. Where is it?

A. Why, I suppose it has been lost. I don't know. I don't — a business keeping papers.

127 Q. How much did it all amount to?

A. Well, up to the time that he made final proof he was owing me between two and three hundred dollars, what money I had advanced to him, for what he had got into debt for, supplies that I had furnished him.

Q. Any money that you had furnished him?

A. Yes.

Q. Do you know how much was furnished in money and how much in supplies?

A. Most of it was for groceries.

Q. I asked you if — knew how much was furnished in money and how much in supplies?

A. No, I don't remember.

Q. You kept account of it at the time, didn't you?

A. I did.

Q. And knew what it was when you settled up with him?

A. I did.

Q. How much had you furnished him up to the time he made his final proof?

A. Well, as I say some two or three hundred dollars.

Q. Two or three hundred dollars?

A. Yes.

Q. Is that all you have furnished him?

A. When he made final proof I furnished him the money to make final proof with.

Q. How much was that?

A. That was something like four hundred dollars.

Q. How much?

128 A. About four hundred dollars, pretty near that. Three or four hundred dollars.

Q. Now, up to that time you had not taken any security of any kind or character?

A. No.

Q. At that time was he working for you any?

A. He was.

Q. How much did you pay him for his labor?

A. Well, his labor didn't amount to much. He was an old man and he wasn't able to do much. His labor didn't amount to much.
Q. He was rather feeble, wasn't he?
A. Yes, he was.
Q. He was also not very strong mentally?
A. Well, he was naturally an ordinary man.
Q. About how old was he at that time?
A. He was something over seventy.
Q. He was rather a weak-minded man, wasn't he?
A. Not naturally so.
Q. I mean at that time in the condition he was in?
A. No, I can't say that he was.
Q. He died at the insane asylum, didn't he?
A. I have heard that he did.
Q. Don't you know that he did?
A. No, I don't. I believe he did. I have heard that he did. I never heard anything to the contrary.
Q. You took a mortgage on this property the day it was proved up?
A. Yes.
Q. Were you in town the day he proved up?
A. I was.
Q. Did you bring him in?
129 A. I think he come with me. He either come with me or some of the witnesses. I think he come with me. I ain't sure about that.
Q. He was living at your house at that time?
A. He never did live at my house.
Q. He didn't live at your house when he worked for you?
A. No.
Q. When did you arrange to get this mortgage that you took on the day he proved up?

To which Mr. Luse upon the part of the defendant objects for the reason that it is incompetent, immaterial and not within the issue made.

Q. When did I arrange with him, you mean?
Q. Yes.
A. Why, he spoke to me some little time before that about getting the money, and I had already arranged to get the money that day, provided the proof was all right.
Q. At that time he told you he would secure you, did he, when he proved up?
A. Yes.
Q. And would give you a mortgage on his homestead claim?
A. Yes.
Q. For what money was that to be given?
A. For what money he got at that time. For what money he owed me.
Q. For all that he owed you?
A. Yes.

Q. How long before he proved up did you make that arrangement?

A. Well it was a month or two.

Q. A month or two?

A. Yes.

130 Q. That is the first time you ever suggested anything about securing you on the two or three hundred dollars you advanced him before that time, was it?

A. It was.

Q. Never made a suggestion to him how he should secure the payment of that money to you?

A. No, sir.

Q. When he got this two or three hundred dollars from you from time to time before he proved up when did you tell him he was to pay it back?

A. Well, the understanding was that when he went up there that he should work for me and pay for these things as he got them, as he went along. That was the understanding.

Q. He never did pay in anything?

A. Well, he didn't pay enough for to keep square with me.

Q. And he had gotten from you two or three hundred dollars?

A. Yes.

Q. When did he say he would fix that up?

A. Well, there never was an understanding about when he was to fix it up until a short time before he did fix it up.

Q. How long before he fixed it?

A. Month or two.

Q. This Landis claim borders on your land, doesn't it?

A. It does.

Q. Had you exhausted your homestead rights at that time?

A. I had.

Q. Do you remember where you met Mr. Landis here in the city of North Yakima that day that you first met him?

A. No.

131 Q. You know what he was doing at that time?

A. I do not.

Q. You remember of suggesting to him that he come and locate a homestead at that time?

A. I suggested to him for to come up and do some work for me up there, look after my place at that time.

Q. And you at that time spoke about this tract of land, didn't you?

A. Well, I told him there was land up there to take up somewheres near about that time.

Q. And you referred to this land, then or at least when you got home, didn't you?

A. Well, about that time I had a ditch running through a piece of land lying right north of a piece of land I used for pasture. The stock coming in there all the time, and I had a place down below here and had a good pasture up above, plenty of pasture there for a good many head of stock, more than I had to pasture there, and I couldn't make use of the pasture unless I got somebody up there

to look after things. I went to Sheriff Grant and asked him if he didn't know of some old man to come up there and look after things while I was away. I wasn't able and didn't have the money for to pay a man good wages for staying there.

(Question repeated by stenographer.)

A. That is not the piece of land that I had in view when he went up there. It ain't the piece of land as I really expected him to take.

132 Q. When you went up there you didn't expect he would locate on the land that he did locate on but on another piece?

A. I did.

Q. Now, was that a near-by piece?

A. It was a piece laying right along and adjoining my pasture, and a piece he could have lived on and raised a little stuff on and looked after my things better than he could on the piece that he got.

Q. Well, what kind of a piece was this that you expect first that he would locate on?

A. Well, it was a piece right adjoining my land on the bottom, laying along the river, right north of it, and the piece lying right along the river he might have raised some garden stuff, and all his fuel and water there. It would have been much handier, I thought, for him to make a home there than the piece that he got, and I really thought that he would take that in preference to the other one, but when he got up there and looked at it he choosed the other one.

Q. Then you came back with him to the land office and he made the entry?

A. He did, yes, sir.

Q. To what extent did you use this land involved during the time that it was kept by Landis as a homestead?

A. I don't know what piece of land you have reference to.

Q. The piece of land that we are litigating about in this suit.

A. I had no use of it at all. Didn't make any use of it.

133 Q. Didn't make any use of it at all?

A. No.

Q. Who did the ploughing of it that was done, if any was done?

A. Why, there was ploughing done there. He paid for the ploughing.

Q. Who did it?

A. I believe I did it. I know I did.

Q. You know you did?

A. I know I did.

Q. How many acres did you plough?

A. Just about three acres.

Q. Did you do anything else there?

A. I ploughed and harrowed it—I ain't sure about harrowing it. I believe he drove the team to harrow it in. I believe I sowed it and ploughed it.

Q. That was the three acres?

A. Yes.

Q. You say some of it was cleared of sagebrush. Did you do any clearing of sagebrush?

A. No.

Q. Who did that?
A. He did it himself, Landis.
Q. How much did you pay him for ploughing?
A. He paid me at the rate of about $3.00 an acre for ploughing, ploughing it and sowing it, and furnished the team to harrow it in.
Q. Did he reap it?
A. Well, there wasn't much of anything done with the reaping part of it. I don't believe anybody reaped it.
Q. Don't you know?
134 A. I paid him a little something for the crop that was left on there. I don't remember just exactly what it was.
Q. Then, as a matter of fact, the crop was reaped, wasn't it?
A. No, the crop wasn't reaped.
Q. What did you pay for it then?
A. I don't remember what was paid for it.
Q. Well, you paid for whatever that crop was, didn't you?
A. I believe I allowed him a few dollars for it.
Q. Well, you took it anyway, didn't you?
A. Yes, I took it.
Q. What did you do with it, feed it?
A. No, I think the sheep ate it up.
Q. Whose sheep?
A. Jackson & Cameron.
Q. Whose house was it under, whose house was on this land?
A. I seen the house.
Q. Wasn't it on there when he went there?
A. There was an old house there when he went on there and he repaired it. It is the same building.
Q. Same building.
A. It is the same thing. He repaired it. There was no door to it, and he done some work on it. It is the same thing, part of the same thing anyhow.
Q. How long had that building been on there?
A. Well that was on there, or the part that he bought was on there some time before he got it.
Q. Do you know how long before?
A. No, I don't know how long it was.
Q. Did you ever do anything towards the house?
135 A. No.
Q. Never did a thing?
A. No, sir.
Q. Never claimed to own it?
A. No, sir, never had. No I didn't claim to own it. Had no interest in it.
Q. Never told anyone that you owned it?
A. No.
Q. When did you say you first got acquainted with Bryant?
A. I didn't say when I first got acquainted with him.
Q. Well, when did you get acquainted with him, then?
A. I don't remember.
Q. Can't you tell within a year of when you first knew him?

A. That first time I remember seeing the man he was up there doing some leveling——

Q. When was that?

A. Carrying the level back and forth up and down the track.

Q. You don't know when that was, do you?

A. I don't remember just when it was.

Q. Was it in 1901, or 1902, or 1903?

A. It was some two or three years, if I remember—a year or two, or two or three years later than that.

Q. You say that Lancaster wanted to sell you a relinquishment, and you had some talk with him at that time, is that right?

A. He talked to me several times about his piece of land before that.

136 Q. Did he want to sell you that relinquishment?

A. Yes, he had offered to sell me the relinquishment, and offered to prove up on the land for me.

Q. When did he do that?

A. Well, that was some time before he disposed of the land, and about that time, too. He had spoke to me about it several times.

Q. Did he talk with you about the Landis' land?

A. No.

Q. Can you give me the date, or approximately the time when Lancaster and you talked about selling his relinquishment to this land?

A. Well, one time particularly that I remember of was shortly before the Cascade Lumber Company built a dam up there.

Q. Well, can you tell me anything about when it was as a matter of time, the year, month and day?

A. I don't remember them dates.

Q. Remember the month?

A. No, I don't.

Q. Remember the year?

A. Well, I don't exactly whether I can give that or not. I am not sure that I can give that. I didn't pay much attention to it.

Q. Now, how far is your house from the Landis house?

A. About a quarter of a mile.

Q. Can you see it all the time?

A. No.

Q. You don't know how long Landis lived there, then, how much of the time, do you?

A. Well, after I would get out in the yard a few steps below the house I can see his cabin. Just a few steps south of where my house is.

137 Q. You don't know——

A. But now where the house stands is in a different place than where I built it on my own land. I moved it further north since I first lived there.

Q. When did you move it further north?

A. About the time when he was living there.

Q. Well, about when was it?

A. Well, that was in '90 or '91, or 1901.

Q. You mean the year 1901?
A. Yes.
Q. You moved it from where?
A. I think that was the date, 1901, I had it moved.
Q. After moving it you moved your own house?
A. I don't know what house you are talking about.
Q. I am trying to find out what house you are talking about.
A. You first talk about my house and then his house. I don't know what house you are talking about.
Q. I asked if you ever moved his house?
A. Landis' house?
Q. Yes.
A. No.
Q. When did you move your own house, in 1901?
A. It was about 1901, I think.
Q. Now, you never answered the question, but went into the house moving business. I want you to answer the question I asked you, and that is, if you didn't know how long, how much of the time Landis lived on his homestead?
A. Just when he was living there.
Q. You know what time he was living there?
138 A. When he first went to living there he went to work for me, and worked all the time he was there.
Q. How long did he work for you?
A. I think it was about two years.
Q. Two years?
A. Yes.
Q. He worked for you steadily two years?
A. I think it was about that time. I don't remember the exact day, but it was about that time.
Q. How much did you pay him a month, or year?
A. I didn't pay him by the month or year.
Q. You didn't pay him either way? Did you pay him by the day?
A. I paid him for what he did.
Q. That is the only answer you want to make, is it?
A. Well, that is the only short way of answering it that I know of.
Q. You meant by that that you didn't pay him by the day, or year, or month. Answer my question first.
A. I didn't pay him by the year or by the month.
Q. Or by the day?
A. I paid him for what he did.
Q. I asked you if you paid him by the day?
A. Yes, when he worked by the day.
Q. Well, how else did he work than by the day?
A. Well, he grubbed sagebrush part of the time, and when he grubbed sagebrush I paid him by the acre.
Q. Where did he grub sagebrush?
139 A. He grubbed sagebrush on my pasture land down there by the river, and on other dry land above.

Q. How many acres of sagebrush did he grub?

A. Well, I don't remember the number of acres he grubbed. Some down there—scattering sagebrush down in the pasture, and some sagebrush—I got a man by the name of Crow——

Q. I want to know how many acres, if any, was——

A. I don't remember.

Q. Now, do you know how many days he worked for you?

A. I don't remember.

Q. Do you know how much you paid him for his working for you all the time dur ag those two years?

A. I do not.

Q. Where did he live during that time?

A. Lived on his own place.

Q. Lived there all the time?

A. He did.

Q. Didn't live up to Mr. Brooks any of the time?

A. He didn't live anywhere else except on his own place when he was working for me.

Q. You say that he worked continually for you for two years, the first two years after his location?

A. Well, he wasn't able to work much of the time. He worked for me while he was able to work.

Q. How much of the time wasn't he able to work?

A. He was able to work about the time he did work, about the amount of time he did work.

Q. Now, Mr. Gilson, don't give us any of that. Just state, if you know, how much of the time——

A. I told you in the first place that I didn't remember the amount of days that he worked.

140 Q. Do you know approximately?

A. You just go to work and ask some questions after I answer your question, and you go and ask some other kind of way, that is the way you come to get such answers.

Q. Now, Mr. Gilson, you say you don't know the number of days that he worked?

A. I kept account of the days he worked; but I haven't got them accounts now.

Q. You have l t them?

A. I have. I don't keep no old papers always.

Q. I asked you if you lost them, not if you kept old papers.

A. I did.

Q. Now, I want to ask you if you know what portion of the time, whether of that two years he worked one half, one-quarter or one-eighth, or what portion of the two years in given days, or months, what portion of the two years he worked for you, during the time he really worked for you?

A. I never figured it up to say what portion it would be.

Q. You say you can't tell about that?

A. Not exactly.

Q. Can you tell nearly?

A. Not very nearly.

Q. Then you couldn't tell us anything about it that would aid us in his inquiry?

A. I know when he settled up.

Q. Can you——

A. If you want your questions answered just to suit you you had better answer them yourself.

141 Q. I am asking you if you can tell anywheres near so as to aid in this inquiry the relative portion of those two years he worked for you?

A. I can't tell exactly, no.

Q. I haven't asked you exactly. I asked you if you can tell it nearly or approximately?

A. I started in to answer that question.

Q. You can answer that yes or no.

A. When you ask me a question I want you to keep still till I answer it.

Q. Can you do that, Mr. Gilson?

A. I propose to answer my questions my way.

Q. Do you know how much Landis, how much money Landis paid at the time he made his application to enter?

A. I don't remember exactly what the land office fees were.

Q. You furnished the money for that, didn't you?

A. I did. That is, I let him have some money along about that time. I suppose he used it for that purpose, part of it.

Q. You expected he would use it for that purpose, didn't you?

A. I didn't know of his having money to use for that purpose other than that.

Q. Will you answer that question?

A. I couldn't swear that he didn't have no money.

(Question repeated by stenographer.) Is that your only answer?

Q. Why, it seems to me like that is an answer.

142 Q. Did Landis have any family?

A. No, not that I know of. That is, he had none while he was there with me.

Q. Did he have any stock?

A. No.

Q. Any horses?

A. No.

Q. Farming tools?

To which Mr. Luse upon the part of the defendant objects for the reason that it is incompetent, immaterial and not proper cross-examination.

A. Well, none to amount to anything. He had some grubbing hoes, something like that. Some files.

Q. Well, didn't he have any tools handled by horses, ploughs?

To which Mr. Luse upon the part of the defendant objects for the reason that it is incompetent and immaterial and not proper cross-examination.

A. No.

Q. Didn't have anything, simply grub-hoes, you say?

To which Mr. Luse upon the part of the defendant objects for the reason that it is incompetent, immaterial and not proper cross-examination.

A. I believe he had a grub-hoe and some files there. I don't know whether he had a garden-hoe,—I believe he had, something of that kind.

Q. That is all he did have?

To which Mr. Luse upon the part of the defendant objects for the reason that it is incompetent, immaterial and not proper cross-examination.

A. I believe he had a sledge there, and an ax, and saw, I believe a shovel. I don't know but what he had a pick.

143 Q. Well, do you know he did have a pick?

A. I believe there was a pick there in the house when he got it. I think there was.

Q. What else was in the house when he got it besides the pick?

A. Well, there was a stove there. I think there was some things to cook with.

Q. Cooking utensils?

A. Somebody had been using it for that purpose.

Q. Anything else besides the stove and cooking utensils that were in the house when he got it?

To which Mr. Luse upon the part of the defendant objects for the reason that it is incompetent, immaterial and not proper cross-examination.

A. Not that I saw.

Q. Any bed or bunk in there?

To which Mr. Luse upon the part of the defendant objects for the reason that it is incompetent, immaterial and not proper cross-examination.

A. Well, there was a bedstead there and some hay on the bedstead.

Q. That was there when he got it?

A. Yes, and a chair or two around there.

Q. He didn't have to furnish anything?

A. And a table, I believe?

Q. Were there any dishes in there?

To which Mr. Luse upon the part of the defendant objects for the reason that it is incompetent, immaterial and not proper cross-examination.

144 A. I couldn't say for certain about that. Somebody had been using cooking utensils; some cans and some thing; I believe a knife or two. I didn't notice much what was there.

Q. He didn't have to take anything in there to go in there and live, did he?

To which Mr. Luse upon the part of the defendant objects for

the reason that it is incompetent, immaterial, and not proper cross-examination.

A. Yes, he did. Had to buy cooking utensils. Not sufficient there for that purpose.

Q. Did you buy any cooking utensils yourself?

A. Yes, I believe I did. Yes.

Q. For Landis?

A. Yes.

Q. What else did you buy for him?

A. He would send for things by me when I come to town and stayed right there on the place. I had a piece of land there, as I say, I couldn't use for pasture unless I had somebody there looking after it, and I told him if he just stayed there and looked after my things I would get his things in town and fetch them up to him.

Q. Do you know how much you paid for those things you took up to him?

A. No, I don't remember the amount.

Q. You kept account of it, did you?

A. I did at that time.

Q. And you intended that he pay you back for them?

A. Yes.

Q. And did he actually pay you back for them when you had your final settlement, about the time he proved up?

A. Yes.

Q. I don't know whether you told the time that you had
145 this final settlement in relation to the proving up. I will ask you again, anyway. Did you have this final settlement with him just before he proved up, did you say?

A. About that time. I believe we figured up before to find out what was owing me, before that.

Q. Before that?

A. Yes.

Q. How long before?

A. Well, I don't remember. We would once in a while figure up to see how we stood, about.

Q. Well, how many times did you figure up to see how you stood?

A. Well, now, I couldn't answer that question.

Q. You can't tell anything about it, is that right?

A. I remember we had figured up the amount several times and we would find out what the difference were and set them down and after that we would, in referring to old accounts we would just refer back to the amount it come to at the time and how we stood at that time. Wouldn't figure up different things that was before that. We would go back and figure up what work and groceries come to, but would figure up a few months and then set down the amount and would know next time about the amount.

Q. You figured up, then, probably every few months during the entire three years?

A. Yes.

Q. Now, have you the figures that indicated what he owed you when you finally figured up?

A. No.

Q. How did you get them in your answer?
A. In my answer? What answer?
Q. Answer in this case?
146 A. I didn't tell you exactly the amount. I said between two and three hundred dollars.
Q. Then the figures that you have given in your answer to the pleading in this case you are unable to verify, except to say that much was due; is that right?
A. Yes.
Q. You don't know how you arrived at the figures you said Landis owed you in the answer here?
A. Yes.
Q. Where did Landis live the last year before he proved up?
A. He lived on his place.
Q. Didn't he work for you then any?
A. Part of the time.
Q. How much of the time, if you know?
A. Well, I couldn't say as to that. I couldn't say the exact time. I don't remember.
Q. You paid him money during that last year, didn't you?
A. Yes.
Q. He didn't work for anyone else but you, did he?
A. Yes.
Q. I mean the last year?
A. Yes.
Q. You know how much he worked for anyone else?
A. No.
Q. Don't know anything about it? You couldn't even tell approximately how much time you put in for anyone else, could you?
A. Well, no, not very near it. I know I have seen him traveling back and forth to his place and working down below there. He seemed to be grubbing sagebrush and looking after things down below there for some folks, right below.
147 Q. What kind of work did Landis do for you, Mr. Gilson, when he did work for you?
A. The most of it was just simply to look after this here pasture fence.
Q. To look after the fence?
A. Look after the pasture fence and grub sagebrush. I told him if he would just look after the place there I wouldn't charge him anything for fetching his groceries up to him.
Q. That is, you would pay his grocery bill?
A. No, I would charge him for the groceries, but wouldn't charge him for fetching anything up to him if he would just simply look after the fence there.
Q. What do you mean by looking after the fence?
A. Well, to keep stock out. It was a place right close to some stock-yards, and cattle and horsemen got in the habit of branding stock there, and there is a watering-place, too, for stock, and they would get stock up there and wild horses would go right through the fence, and I couldn't use this land for pasture unless I had somebody there to look after those fences.

Q. Did he do that work by the day, or job, or how?
A. Well, he didn't get anything for that, only just the trouble I was put to to take his things up there.
Q. How far from his house or your house was it?
A. Well, the land that he was looking after this pasture, is right where he went to get his water, drinking water.
148 Q. I am not talking about his water, but how far it was from your house or his house?
A. Well, it was about a quarter of a mile.
Q. All you paid him for that service was to bring his groceries up without charging him anything?
A. Yes.
Q. Do you know how much of the time he was doing that kind of work?
A. Well, he looked after that all the time.
Q. He couldn't do anything else when he was looking after that, could he?
A. That didn't occupy any of his time only unless the fence got down.
Q. Well, did he do something else then while he was watching that fence?
A. Yes.
Q. What else did he do?
A. Grubbed sagebrush.
Q. Where did he do that?
A. Grubbed sagebrush on my land, that is, on the homestead, my homestead.
Q. Did you tell me how many acres he grubbed there?
A. He grubbed a little on the homestead and a little on a piece of land I bought from a man by the name of Crowney.
Q. How much did he grub on your land and how much on Mr. Crowney's land?
A. I didn't say he grubbed any of Mr. Crowney's land.
Q. How much did he grub on your land?
149 A. He grubbed some on a piece of land I bought from Crowney. I don't remember the exact amount. You have asked that question several times before.
Q. I am asking you again. You don't remember the amount?
A. No.
Q. Can't tell anything about how much it was?
A. Not exactly, no.
Q. Was there any sagebrush on there that he didn't grub?
A. There was some scattering sagebrush on the land, and I just paid him so much for clearing that piece of land.
Q. How much did you pay him for clearing that piece of land?
A. I don't remember.
Q. Then that is all he did that took any part of his time, was clearing sagebrush, wasn't it?
A. No, it wasn't.
Q. Well, I understood you to say that was all, except keeping the fence——
A. I didn't say that was all the work he did.

Q. When I get done you can answer. Did you not say to me that all he did was to look after the fence and grub sagebrush, and that it didn't take any of his time to look after the fences? Did you say that or not?

A. Well, now, you hold on till I answer the question——

Q. I asked you, did you say that or not?

A. I didn't say it the way you stated.

150 Redirect examination.

(By Mr. LUSE:)

Q. Can you state, Mr. Gilson, anything about the total amount which you paid him for work, allowed him in the settlement?

A. No, I couldn't say the amount. It probable cost him——

Mr. AVERY: I object to his stating——

A. —two or three dollars a week for board and groceries, what he would eat, probable between two or three dollars a week.

Mr. LUSE:

Q. Is there any explanation you would like to make of anything——

A. These parties are trying to make it appear as though I had got this particular man up there just to get a piece of land and then get the land afterwards. I would just like to explain that.

Q. Just state why you got him up there if you want to.

To which Mr. Avery upon the part of the complainant objects, for the reason that it is not redirect examination, it is indefinite, uncertain, calls for a conclusion of the witness, is not the best evidence, and as gone over entirely in his direct examination.

Q. Now, answer the question, Mr. Gilson.

A. Well, I used to own the fair ground down here, and when I sold it—had 120 acres—I had but fifteen acres left. I had three head of horses and a cow, and I didn't have room to keep them there and pasture them, and as I had a good pasture on this place
151 above here I couldn't make use of it unless I had somebody there looking after it. I went to Sheriff Grant one day and asked him if he didn't know of some old man I could get to go up there and look after the place while I was away from home, and he introduced me to this man Landis. I took him up there and showed him a piece of land along the river.

Q. You needn't go into details, just why you wanted him there.

A. I wanted him there close to my land so he could look after stock and keep the fence up when I was away from the place up there and down here. I was trying to do the work on both places. I wasn't able to hire help and pay expenses of a good man, and was trying to do the work on both places. I got this old man up there, and he looked after my fence and kept the stock in and kept other stock out, and looked after the fence, and kept the gate shut when I was away from the place up there and down here.

Q. You stated you advanced him money when he first went up

there. State what the understanding was as to the repayment to you of that money.

A. He was to pay me back in work on the place when he got that money and not charge anything for keeping the stock in the pasture there.

Q. Now, you have stated on cross-examination that you let him have considerable money. You can state to the best of your knowledge in what size sums you let him have that.

152 A. Well, I didn't let him have much money before the time he made final proof, and it would be just a few dollars at the time, and he really needed it. The most he got was in groceries, and I took these groceries up to him, and clothes, as he needed them.

Recross-examination.

(By Mr. AVERY:)

Q. You said a few dollars at the time you gave this money. I understand you to say that you cannot give any detail account of the money that you did pay him?

A. No.

[*Deposition of W. C. Fayenne for the Defendant.*]

W. C. FAYENNE, called, sworn and testified as follows on behalf of the defendant.

Direct examination.

(By Mr. LUSE:)

Q. Mr. Fayenne, were you acquainted with Daniel Landis, who had a homestead near Mr. Gilson.

A. Well, slightly. I have talked with him a couple of times.

Q. Do you know where the homestead was?

A. Yes, sir.

Q. At that time did you live in the neighborhood?

A. Yes, sir.

Q. You may state, if you know, whether or not there was any crop raised on that land before Mr. Landis made final proof?

A. Yes, sir, there was wheat on it when I first went through it.

153 Q. How many acres of wheat was there there?

A. I think—a little piece—about three or four acres.

Q. Was there any land cleared prior to the time he made proo except this three acres?

A. Yes, quite a bit was sagebrushed.

Q. Cleared or sagebrush, is that what you mean?

A. Yes, sir.

Q. How much of that was there, would you think?

A. I should think in the neighborhood of ten acres.

Q. Now, you may state whether or not, so far as you could ob

serve, Mr. Landis lived there during the time that he had the homestead.

A. Well, I went through his place three times, and through this man's (meaning Gilson), come right east, and the third time I found the gates all fastened up, and I concluded he didn't want anybody to go through the old road, and I quit it and went around with the wagon then.

Q. Did he have the three acres fenced

A. I don't think any more.

Q. Was the three acres he had fenced?

A. Yes, it was fenced then.

Q. Were you acquainted with the values of land in that locality at that time, Mr. Fayenne. Did you know what lands were worth in the neighborhood at that time?

A. Why, I had an idea.

154 Q. Well, what would be your idea as to the value of this land at the time he made proof?

A. Well, I didn't consider it worth very much.

Q. Well, how much would you call very much?

A. Well, at that time I wouldn't believe it was worth $2.00 an acre to any person.

To which Mr. Avery on the part of the complainant objects for the reason that it is immaterial.

Cross-examination.

(By Mr. AVERY:)

Q. Where do you reside, Mr. Fayenne?

A. Right out Fourth Street.

Q. Here in the city?

A. Yes, close to the city.

Q. Where did you live in 1899 to 1901, say November 21, 1902?

A. I had a home here in town then, I think—no, I didn't; it was where I am now, come to think.

Q. Then during the three years that Landis is alleged to have occupied this homestead you lived here in the city?

A. No, I lived outside of the city, but I was up there every week pretty much.

Q. How far outside of the city did you live then?

A. Well, I was in the corporation then, but not now. It was considered a rural district.

Q. How far from this courtroom was it?

A. Just a mile, as nigh as I can tell you.

Q. How far away from your home during that period was the Landis home?

155 A. About eight miles, I guess.

Q. About eight miles?

A. I think so.

Q. You say you went through there three times?

A. Through Mr. Landis' place.

there. State what the understanding was as to the repayment to you of that money.

A. He was to pay me back in work on the place when he got that money and not charge anything for keeping the stock in the pasture there.

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Q. At that time did you live in the neighborhood?

A. Yes, sir.

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A. Yes, sir, there was wheat on it when I first went through it.

153 Q. How many acres of wheat was there there?

A. I think—a little piece—about three or four acres.

Q. Was there any land cleared prior to the time he made proof except this three acres?

A. Yes, quite a bit was sagebrushed.

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A. Yes, sir.

Q. How much of that was there, would you think?

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A. Well, at that time I wouldn't believe it was worth $2.00 an acre to any person.

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Q. Then during the three years that Landis is alleged to have occupied this homestead you lived here in the city?

A. No, I lived outside of the city, but I was up there every week pretty much.

Q. How far outside of the city did you live then?

A. Well, I was in the corporation then, but not now. It was considered a rural district.

Q. How far from this courtroom was it?

A. Just a mile, as nigh as I can tell you.

Q. How far away from your home during that period was the Landis home?

155 A. About eight miles, I guess.

Q. About eight miles?

A. I think so.

Q. You say you went through there three times?

A. Through Mr. Landis' place.

Q. Did you say you thought Landis resided there during that time, lived there at that time?

A. He did at first.

Q. When was it that you first went through there, first saw this place?

A. Well, now, I couldn't tell you exactly the date. It was sometime, I think, a little before June 1st.

Q. What year?

A. Well, I went there twice afterwards.

Q. What year?

A. Can't tell you that. It was the year that he proved up, I think.

Q. You think, then, you went through there first the year that he proved up, in June.

A. Yes, sir.

Q. And you went through there twice after that in the same year?

A. Yes, sir.

Q. Between then and the time that he did prove up?

A. Yes, sir.

Q. And those were the only times that you had any opportunity to investigate to see whether he lived there or not? Those are the only three times that you examined the place to know whether he lived there or not?

A. Yes, but I found out that he removed on account of ill-health afterward to a farmhouse, and that is where I fell in with
156 him and had the next talk. I used to get water there to take up on my place.

Q. When did he prove up, Mr. Fayenne, Landis?

A. Well, I can't tell you that, but the papers there will tell you. I didn't keep track of anything you know, the day and date.

Q. Do you know what month it was?

A. No, I don't. It was more a conversation with him. I didn't think there was anything to it, you know, that concerned me, and I didn't press my mind with it.

Q. You state there were not to exceed three acres of wheat there?

A. I didn't hear.

Q. I say, you thought there was about three acres of wheat on that homestead?

A. Well, I wasn't over it nor around it, but I went through it and it looked as though it was all wheat.

Q. When was that?

A. That was a little before June 1st and after June, twice.

Q. Now, where was the land cleared, the ten acres that you think was cleared?

A. Why back of it and on each end.

Q. The times that you saw that, the three times that you went through there?

A. Yes, and I seen it yesterday.

Q. Yesterday?

A. Yes, sir.

Q. Did you say that some portion of the homestead was fenced?

157 A. Yes, there was four acres.

Q. What kind of fence?

A. Wire fence and posts.

Q. When was that put up, Mr. Fayenne?

A. I couldn't tell you that. That was before my time.

Q. Well, when is your time?

A. Well, when I went up on my homestead through this place.

Q. That is, anything before June, 1902, is before your time?

A. Yes, sir.

Q. You didn't see the fence built and don't know who built it?

A. Oh, no. It looked like considerable of an old fence.

Q. By the way, how old did it look? Are you a pretty good judge of the age of fences?

A. I ought to be.

Q. About how old was the fence?

A. It looked to me to be two or three years old.

Q. Or more possible Might have been more?

A. Oh, yes, it might have — more, might have been less.

Redirect examination.

(By Mr. LUSE:)

Q. You had a claim there, near there, did you?

A. I had.

Q. At that time?

A. At that time.

Q. How near was it?

A. Why, it joined it to the east.

158 [*Deposition of J. W. Sheets for the Defendant.*]

J. W. SHEETS, called, sworn, and testified as follows, on behalf of the defendant:

Direct examination.

(By Mr. LUSE:)

Q. You may state, Mr. Sheets, whether you were one of the witnesses for Mr. Landis when he made proof upon his homestead, Mr. Daniel Landis?

A. I was.

Q. You gave testimony in that final proof before the United States Land Office, did you?

A. Yes, sir.

Q. Well, now, you may state, Mr. Sheets, what improvements there were upon the land at that time?

A. Well, there was a house on the place, and some ploughing done. There was a fence put around there, and ploughing.

Q. You testified to these improvements, did you, before the Land Office?

A. Yes, sir.

Q. You may state whether or not in that testimony you gave the improvement- and the value of them to the best of your knowledge and belief at that time?

A. Yes, sir.

Cross-examination.

(By Mr. AVERY:)

Q. Who asked you to be a witness in that final proof, Mr. Sheets?

A. I think it was Mr. Landis, if I am not mistaken.

159 Q. Do you remember?

A. No, I don't remember positively, but I think it was him.

Q. Isn't it a fact that Mr. Gibson and Mr. Landis came to you?

A. Well, they might have come, but I couldn't say positively.

Redirect examination.

(By Mr. LUSE:)

Q. Mr. Sheets, who was the other witness with you at that time?

A. Well, I think it was Mr. Maywold.

Recross-examination.

(By Mr. AVERY:)

Q. Where do you reside?

A. East Selah.

Q. About how far from this land, this Landis land?

A. Well, it is about two mile-, I guess, two mile- and a half, as near as I can judge.

[*Deposition of Vincent Maywold for the Defendant.*]

VINCENT MAYWOLD, called, sworn, and testified as follows on behalf of the defendant:

Direct examination.

(By Mr. LUSE:)

Q. How old are you?

A. I am now seventy-seven.

Q. You may state whether or not you remember being a witness for Mr. Daniel Landis when he proved up.

160 A. I cannot prove anything about that. It come out of my head. I can't remember that I was a witness.

[*Deposition of Silas A. Gilson for the Complainant (Recalled).*]

SILAS A. GILSON, recalled on behalf of the complainant, and further testified as follows:

(Mr. AVERY:)

Q. You had some trouble with Landis during your arrangement with him and while he was holding down this land, didn't you, Mr. Gilson?

A. No serious trouble with him.

Q. Well, you remember the time you locked up the door there, don't you, put a padlock on it?

A. I didn't lock him up at all.

Q. You put a padlock on the door?

A. He had a padlock on the door himself.

Q. You didn't put it on?

A. No.

Q. Didn't you lock it up?

A. No.

Q. Sure of that?

A. Yes.

Q. You say you didn't have any serious trouble with him. Did you have any trouble?

A. Well, after he left a while he got pretty feeble, and I got to the conclusion it was the way he lived. He didn't eat much but tobacco and bacon and beans and grease, and I didn't think that was a very healthful diet for an old man like him, and I went and bought a few things that he didn't order and it made him mad. That is the only time we had any trouble.

161 Q. You forbid him to go into the cabin, didn't you?

A. No, I didn't.

Q. Didn't you post a notice on the cabin not to enter?

A. No, sir.

Q. Sure of that?

A. No, sir, I did not.

Q. Never put any notice on the cabin?

A. No, sir.

Q. Never directed him not to go in there?

A. No.

Q. Never put your own name there as being the owner of the cabin?

A. No.

Q. Did you have any written agreement with Landis?

A. No.

Q. Didn't have any writing at all?

A. No. The only agreement we had was a verbal agreement. It was understood he was to look after the fence and things there and keep stock out while I was on the place down here, keep stock out. They broke down and done such damage as caused me a day or two's work, and I would pay him for that, to keep the stock out,

and he used to do that for my trouble of taking up his groceries to him, not for the expense of the groceries, but simply for waiting on him, getting things and taking them up to him.

Q. And while he was living there you got for him all the food and things, living things?

A. Yes. He wasn't hardly off the place for over a year.

Q. You got the final proof witnesses, didn't you?

A. No, I didn't get the final proof witnesses.

162 Q. Didn't you ask the final proof witnesses to testify?

A. No.

Q. None of them?

A. No.

Q. Who did?

A. He got them himself.

Q. Weren't you with him?

A. I was with him when he went to make final proof.

Q. Were you with — when he went to get witnesses, to ask them to testify?

A. At first?

Q. Yes.

A. No.

Q. Were you with him when he got those witnesses at any time?

A. When he got ready to go to town, I was with him part of the time, and he didn't know just what witnesses he would get for a while, and he went and seen Sheets, and Mr. Sheets was busy, or he couldn't find them, I forgot which. Then Seymour was off a little ways, and I went out in the field where Seymour was and asked him if he had been chose as one of the witnesses, and he said "Yes," he had, but that he was busy that day and if the old man could get Sheets to go in his place, so he hunted up Sheets and Sheets went down. Seymour told me that he agreed to be a witness for the old man, but he said he was busy that day, and he could, why, for to get Sheets to go in his place.

Q. Do you know who put the dishes and things in the cabin that was there?

A. Why, he put them in himself.

Q. You said there was some there?

163 A. There was a few things there, some cans, I think, some oil cans, and the like of that.

Q. Did you put any of them in there before—what is the name—got there?

A. No.

Q. Do you know who did?

A. The man he bought his relinquishment of lived there some time before that.

Q. Who bought the relinquishment?

A. Old man Landis.

Q. When did he buy this relinquishment?

A. He bought it about the time he filed on the land.

Q. You furnished the money for that, didn't you?

A. I furnished the money. I supposed he used part of it for that purpose.

Q. How much did you furnish him?

A. I don't remember the exact amount that I furnished him that time. I don't remember just what it was that he paid for his relinquishment.

Q. Do you know the man's name that he bought it of?

A. I think his name was Vandevier.

Q. And you say that Mr. Landis at no time during the time of his alleged occupancy of this land, I mean Landis' occupancy of the land, that you never suggested or had any agreement whatever that you were to be secured on the homestead after he proved up?

To which Mr. Luse upon the part of the defendant objects for the reason that it is immaterial and not proper cross-examination.

164 A. No, there was no talk about that at all, except about the time, or shortly before I let him have the money to make the proof.

Q. Then there was talk about it, was there?

A. Yes, we talked about it.

Q. How long before?

A. A month or two. I had been working on a scheme there for several years to get water on that land, and I didn't see any way of doing it but get a man——

To which Mr. Avery upon the part of the complain-t objects for the reason that it is not in response to any question.

(Mr. LUSE:)

Q. Did you ever see the man from whom he bought the relinquishment?

A. Yes, I saw the man. I didn't get acquainted with him.

Q. Did you see him at the time that Landis got the relinquishment?

A. No.

Q. Or anywhere near that time?

A. I don't remember of seeing him at that time.

Q. You had nothing to do then with the negotiations in regard to buying the land.

To which Mr. Avery upon the part of the complainant objects for the reason that it is leading.

A. No more than the old man has talked with me about it, and found out from him he owned the land.

Q. Well, state whether or not you had anything to do with any negotiations with the owner of the relinquishment.

165 A. The old man, I believe, had me to write a letter to the man, or he wrote the letter, I don't remember which. He found out—I think he had me find out where the man lived that owned the land.

Mr. AVERY:

Q. Where does the man live?

A. I don't know where he lives now. I think he lived over on the Sound some place at that time.

Q. You couldn't tell me now where he lives, or exactly where he did then?

A. Knew he was over on the Sound somewhere. I don't remember just exactly where it was.

It is stipulated by counsel for complainant and defendant that the signatures of witnesses to their respective depositions is waived by the parties.

[*Certified Copy of Order Appointing Examiner to Take Evidence, etc.*]

In the Circuit Court of the United States for the Eastern District of Washington, Southern Division.

No. 24.

UNITED STATES OF AMERICA, Complainant,
vs.
SILAS A. GILSON, Defendant.

It appearing to the Court that the respective parties to the above-entitled cause have heretofore duly stipulated that E. E.
166 Cleaver act as Examiner to take evidence in the above-entitled cause, and it appearing that the said parties have acted upon said stipulation and that the said Cleaver already has, and probably will hereafter, take further testimony as such Examiner,—

Now, therefore, on motion of the United States Attorney, because of the facts and by reason of the premises, it is hereby

Ordered and adjudged that said E. E. Cleaver, be, and he hereby is appointed, Examiner to take the evidence in the above-entitled cause and his acts and doings heretofore as such Examiner, under said stipulation, are hereby approved and confirmed and are adjudged to be of the same force and effect as if done after his appointment to the position of Examiner by an order of this Court.

Done in open Court this 4th day of September, A. D. 1908.

EDWARD WHITSON, *Judge.*

UNITED STATES OF AMERICA,
Eastern District of Washington, ss:

I, Frank C. Nash, Clerk of the Circuit Court of the United States for the Eastern District of Washington, do hereby certify that I have compared the foregoing copy with the original Order Appointing Examiner, in the foregoing entitled cause, now on file and of record in my office at North Yakima, and that the same is a true and perfect transcript of said original and of the whole thereof.

167 Witness my hand and the seal of said court this 4th day of September, 1908.

[SEAL.] FRANK C. NASH, Clerk,
By EDWD. E. CLEAVER, *Deputy.*

[*Examiner's Certificate to Testimony, etc.*]

In the Circuit Court of the United States for the Eastern District of Washington, Southern Division.

UNITED STATES OF AMERICA, Complainant,
vs.
SILAS A. GILSON, Defendant.

UNITED STATES OF AMERICA,
Eastern District of Washington, ss:

I, Edward E. Cleaver, the duly appointed, qualified and acting Examiner in the above-entitled cause, and who, it was stipulated by the parties, should act as examiner, hereby certify that the foregoing testimony in the above-entitled cause was taken before me on the 22d day of August, 1908, and the 25th day of September, 1908, and the 16th day of November, 1908, at my office, in the city of North Yakima, in the Eastern District of Washington, that before testifying, each of the several witnesses was by me severally, and duly sworn to tell the truth, the whole truth and nothing but the
168 truth, and that said testimony was taken in shorthand with the consent of the parties and by such consent thereafter reduced to typewriting as hereinabove, and the signatures of the respective witnesses to their extended depositions were waived.

Done this 28th day of November, A. D. 1908.

EDWD. E. CLEAVER, *Examiner.*

[Endorsed:] Filed in the U. S. Circuit Court, Eastern Dist. of Washington. November 30, 1908 Frank C. Nash, Clerk. Edwd. E. Cleaver, Deputy.

In the Circuit Court of the United States for the Eastern District of Washington, Southern Division.

No. 24.

UNITED STATES OF AMERICA, Complainant,
vs.
SILAS A. GILSON, Defendant.

Memorandum Decision on the Merits.

A. G. Avery, U. S. Attorney.
Cull, Luse & Davis, for Defendant.

HANFORD, *District Judge:*

This is a suit in equity by the government to cancel a patent issued to one Daniel Landis for a tract of land situated in the North Yakima land district.

The grounds for the proceeding are that Landis did not enter the land under the homestead law in good faith to acquire a home
169 for himself, but merely served as an instrument for acquiring title to the land for the use and benefit of the defendant Gilson.

From the evidence the Court finds the facts to be as follows:

Gilson owned land adjacent to the tract which is the subject of this suit, which he wished to make use of for pasture, and with that object in view he induced Landis to locate and live in the vicinity to keep up his (Gilson's) fences. Not feeling able to pay a man's wages for the light labor of caring for fences, it was arranged for Landis to earn compensation by exercise of his homestead right. Gilson procured from a prior claimant a relinquishment and the right to appropriate a cabin which was then upon the land and which constituted the only habitation on the land then or since. The only other improvements on the land consist of about ten acres upon which the sagebrush has been grubbed, and about three acres which was ploughed once and planted to wheat, which never yielded a crop worth harvesting.

Landis filed his claim under section 2289 of the Revised Statutes of the United States in November, 1899, and commuted under section 2301 Revised Statutes in November, 1902, and a patent was issued in July, 1903. The evidence on which the Register and Receiver allowed the commutation entry included sworn statements by Landis and two witnesses to the effect that the claimant had lived continuously on the land and made improvements, including
170 a corral and chicken-house, and that he had cultivated three acres three seasons. That was a false statement, there having been no ploughing or cultivation except during the third year. The land is dry sagebrush land and not productive without irrigation. The only return from the wheat which was planted on the three acres was eaten by sheep owned by a firm named Jackson & Cameron.

Gilson furnished the meagre supplies on which Landis subsisted during the period of his occupancy of the land, or gave him at different times money in pittances sufficient to buy necessaries, and also furnished the money paid to the Government for the land, including the land office fees. On the same day that the commutation entry was made Landis gave a mortgage on the land to Gilson and he then ceased to live on the land. He also deeded the land to Gilson immediately after the patent was issued.

Section 2301 United States Revised Statutes, authorizes persons who have taken the benefits of section 2289 to pay the minimum price for the quantity of land so entered at any time after the expiration of fourteen calendar months from the date of such entry, and obtain a patent therefor, upon making proof of settlement and of residence and cultivation for a period of fourteen months. This statute is to be constructed in harmony with the policy of the public land laws allowing actual settlers, in good faith, the privilege of acquiring land in limited quantities for actual cultivation and use. Manifestly it is contemplated that a bona fide settler will
171 during a period of fourteen months, make such progress in the improvement of his claim as will tend to make it habitable

and productive. A man old and infirm, as the evidence shows Landis to have been, could not be expected to do as much as one younger and stronger, and non-productive sagebrush land could not be tilled profitably without irrigation. But after making due allowance for the conditions shown to exist, the conclusion is unavoidable that Landis made only a pretense of settlement and a show of improving the land merely to satisfy the scruples of the witnesses upon whom he depended to make final proof. If it had been his intention to make a home he would, instead of expending his labor in grubbing sagebrush, have provided a well; and instead of doing a thing so useless as to plant wheat, he would have made provisions for keeping chickens or to irrigate enough ground to supply him with necessary vegetables.

The defendant Gilson was cognizant of every detail of the transaction at the different stages from the inception to the issuance of the patent, and, indeed, he instigated and directed the proceedings at every step, therefore he cannot claim to be a bona fide purchaser from Landis.

The Court directs that a decree be entered granting the relief prayed for in the bill of complaint.

C. H. HANFORD, *Judge.*

[Endorsed:] Filed for record in the U. S. Circuit Court, Eastern Dist. of Washington. June 19, 1909. Frank C. Nash, Clerk.

172 In the Circuit Court of the United States for the Eastern *Division* of Washington, Southern Division.

No. 24.

UNITED STATES OF AMERICA, Complainant,
vs.
SILAS A. GILSON, Defendant.

Decree.

The above-entitled cause having heretofore been submitted by the respective parties on the merits on briefs filed herein and on the testimony and evidence taken by the respective parties before E. E. Cleaver, Examiner, and the Court having considered said testimony and evidence and the briefs of the respective counsel thereon, and being fully advised in the premises, it is

Ordered, adjudged and decreed as follows:

That the patent described in the bill of complaint as having been issued by the complainant, the United States of America, to Daniel Landis on or about the 21st day of July, 1903, purporting to cover, convey and patent to the said Daniel Landis the following described lands and premises, to wit: The east half of the northwest quarter and the northeast quarter of the southwest quarter of section twenty

(20), township fourteen (14) north, range nineteen (19),
173 E. W. M., in Yakima County, State of Washington; and that the mortgage executed by said Daniel Landis to the defendant Silas A. Gilson, on or about the 21st day of November, 1902, and filed for record in the office of the Auditor of Yakima county, Washington in Book "Z" of Mortgages at page 50, which purports to mortgage said real estate to said defendant, and that certain deed executed by said Daniel Landis on or about July 13, 1903, wherein and whereby the said Landis purports to convey to the defendant Silas A. Gilson the above-described land, and which deed was filed for record in the office of the Auditor of Yakima County, Washington, on said July 13, 1903, and is recorded therein in Book 21 of Deeds, at page 95, be, and the same are, null and void, and the same are hereby canceled, set aside and held for naught.

And it is further ordered, adjudged and decreed that the defendant, Silas A. Gilson, has no right, title, interest or estate in said real estate, or any part thereof, and that the same is hereby declared to be, and is, cleared and free from any and all cloud or clouds thereon by reason of the issuance of said above-described patent, or said above-described deed, and the title thereto is hereby declared to be in the United States of America, complainant herein, free and clear of any right, title, interest or estate of the defendant, or any one claiming through or under him.

That the complainant, United States of America, do have and recover from the defendant, Silas A. Gilson, its costs and disbursements incurred herein to be taxed.

174 Defendant excepts to the foregoing Decree, and an exception is allowed.

Done in open court this 18th day of June, A. D. 1909.

C. H. HANFORD, *Judge.*

[Endorsed:] Filed for record June 19th, 1909. Frank C. Nash, Clerk.

[*Acknowledgment of Service of Notice of Judgment, etc.*]

In the Circuit Court of the United States for the Eastern District of Washington, Eastern Division.

No. 24.

UNITED STATES OF AMERICA, Complainant,
vs.
SILAS A. GILSON, Defendant.

We hereby acknowledge the service on us, on the 19th day of June, 1909, of due and legal notice of the fact that a judgment in the above-entitled cause in favor of the complainant was made, entered and filed in the above Court on the 18th day of June, 1909, and also the service on us, at said time, of a copy of said judgment.

CULL, LUST & DAVIS,
Attorneys for Defendant.

[Endorsed:] Filed for record June 26th, 1909. Frank C. Nash, Clerk. By Edwd. E. Cleaver, Deputy.

175 In the Circuit Court of the United States for the Eastern District of Washington, Southern Division.

UNITED STATES OF AMERICA, Complainant and Respondent,
vs.
SILAS A. GILSON, Defendant and Appellant.

Assignment of Errors.

Comes now Silas A. Gilson, the appellant in the above-entitled action, by his attorneys Frank A. Luse and Allen S. Davis, on this 15th day of November, 1909, and says that in the record and proceedings and judgment in the above-entitled action there is manifest error in this, to wit—

I.

That the Court erred in finding as a matter of fact that Daniel Landis did not apply to enter the land described in the complaint and in the judgment in good faith and for his own exclusive use and benefit.

II.

That the Court erred in finding that the said Daniel Landis committed any fraud in making final proof before the Register and Receiver of the United States Land Office in entering said land.

III.

That the Court erred in holding as a matter of fact that the defendant in this action, Silas A. Gilson, had any knowledge
176 or notice of any fraud committed by the said Daniel Landis in entering said land, if any such fraud was by the said Landis committed.

IV.

The Court erred in entering judgment against this defendant and in favor of the plaintiff, canceling the patent described in the complaint and in the judgment.

V.

The Court erred in not dismissing the said action against this defendant.

Wherefore, the said Silas A. Gilson prays that the order and judgment of the said Circuit Court of the United States for the Eastern District of Washington, Southern Division, be reversed, and that the said Circuit Court of the United States for the said Eastern District

of Washington Southern Division, be ordered to enter an order and judgment dismissing the said action.

FRANK A. LUSE,
ALLEN S. DAVIS,
Attorneys for Appellant, Ward Building, North Yakima, Washington.

[Endorsed:] Filed November 19th, 1909. Frank C. Nash, Clerk. Edwd. E. Cleaver, Deputy.

177 In the Circuit Court of the United States for the Eastern District of Washington, Southern Division.

UNITED STATES OF AMERICA, Complainant and Respondent,
vs.
SILAS A. GILSON, Defendant and Appellant.

Appeal [and Order Allowing Appeal].

The above-named defendant, Silas A. Gilson, conceiving himself aggrieved by the order and judgment entered June 18th, A. D. 1909, in the above-entitled proceedings, doth hereby appeal from said order and judgment to the United States Circuit Court of Appeals for the Ninth Circuit, and he prays that his appeal may be allowed, and that the transcript of the record and proceedings and papers upon which said order and judgment was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the said Circuit.

FRANK A. LUSE,
ALLEN S. DAVIS,
Attorneys for Defendant and Appellants, Silas A. Gilson, Ward Building, North Yakima, Wash.

Spokane, Washington, November fifteenth, 1909.

Now, to wit, on this 16th day of November, 1909, it is ordered that the Appeal be allowed as praved.

EDWARD WHITSON, *Judge.*

178 [Endorsed: Filed in the U. S. Circuit Court, Eastern Dist. of Washington. November 19, 1909. Frank C. Nash, Clerk. Edwd. E. Cleaver, Deputy.

In the Circuit Court of the United States for the Eastern *Division* of Washington, Southern Division.

UNITED STATES OF AMERICA, Complainant and Respondent,
vs.
SILAS A. GILSON, Defendant and Appellant.

Bond on Appeal.

Know All Men by These Presents: That we, Silas A. Gilson as principal, and the Fidelity and Deposit Company of Maryland, as

surety, are held and firmly bound unto the United States of America in and for a just sum of Two Hundred and Fifty Dollars ($250.00), to be paid to the said United States of America, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally and firmly by these presents.

Sealed with our seals and dated this eleventh day of November, in the year of our Lord one thousand nine hundred and nine.

Whereas, lately at a session of the Circuit Court of the United States for the Eastern District of Washington, Southern Division, in a suit pending in said Court between the said United
179 States of America as plaintiff and Silas A. Gilson as defendant, a decree being rendered against the said Silas A. Gilson, and the said Silas A. Gilson having obtained from said Court an order allowing an appeal to the United States Circuit Court of Appeals to reverse the decree of the aforesaid suit, and a citation directed to the said United States of America is about to be issued citing and admonishing it to be and appear at the United States Circuit Court of Appeals for the Ninth Circuit, to be holden in Seattle in the State of Washington.

Now, therefore, the condition of the above obligations is such, that if the said Silas A. Gilson shall prosecute his said appeal to effect, and shall answer all damages and costs that may be awarded against him if he shall fail to make his appeal good, then the above obligation is to be void, otherwise to remain in full force and virtue.

SILAS A. GILSON.
FIDELITY AND DEPOSIT COMPANY
OF MARYLAND.
By WALTER S. McRAY,
[CORP. SEAL.] *Attorney in Fact.*

Attest:

By A. W. WHALEY, *Agent.*

The sufficiency of the amount and form and sureties of the foregoing Bond is approved this 16th day of November, 1909.

EDWARD WHITSON, *Judge.*

180 [Endorsed:] Filed for record November 19th, 1909. Frank C. Nash, Clerk. By Edwd. E. Cleaver, Deputy.

In the Circuit Court of the United States for the Eastern District of Washington, Southern Division.

UNITED STATES OF AMERICA, Complainant and Respondent,
vs.
SILAS A. GILSON, Defendant and Appellant.

Citation on Appeal [Copy].

UNITED STATES OF AMERICA, *ss:*

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at the term of the United States Circuit Court of Appeals for the Ninth District to be held at the city of Seattle, in the State of Washington in said circuit, within thirty days of the date of this Citation pursuant to an appeal filed in the clerk's office of the Circuit Court of the United States for the Eastern District of Washington, Southern Division, wherein Silas A. Gilson is appellant and the United States of America is respondent, to show cause, if any there be, why the judgment in the said appeal mentioned should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice
181 of the United States, this 16th day of November in the year of our Lord one thousand nine hundred and nine.

EDWARD WHITSON, *Judge.*

[Endorsed:] Filed for record Nov. 19th, 1909. Frank C. Nash, Clerk. Edwd. E. Cleaver, Deputy.

(To the foregoing Citation on Appeal is attached the following:)

Return on Service of Writ.

UNITED STATES OF AMERICA,
Eastern District of Washington, ss:

I hereby certify and return that I served the annexed Citation on Appeal on A. G. Avery, U. S. Attorney for the Eastern District of Washington, by handing to and leaving a true and correct copy thereof with him at Spokane in said District on the 22d day of November, A. D. 1909.

GEO. H. BAKER,
U. S. Marshal.
R. D. McCULLY, *Deputy.*

Service	$2.00
1 mile	.06
	$2.06

[Endorsed:] Filed for record in the U. S. Circuit Court, Eastern Dist. of Washington. Nov. 23, 1909. Frank C. Nash, Clerk. Edwd. E. Cleaver, Deputy.

182 United States Circuit Court for the Eastern District of Washington.

No. 24.

UNITED STATES OF AMERICA, Plaintiff,
vs.
SILAS A. GILSON, Defendant.

Præcipe [for Transcript of Record].

To the Clerk of the Above-entitled Court:

You will please prepare the transcript of the complete record in the above-entitled cause to be filed in the office of the Clerk of the United States Circuit Court of Appeals for the 9th District, and include in said transcript the following records, as follows, to wit: Complaint, Answer, Opinion of the Court, Decree, Assignment of Error, and the order allowing the same, Citation, and proof of service of the same, Bond, and approval of the same, Appeal, and allowance of the same and the testimony taken in the case, and all papers necessary to make the complete record in the said cause.

FRANK A. LUSE,
Attorney for Defendant.

NOTICE.—Attorneys will please endorse their own Filings.

[Endorsed:] Filed Dec. 10th, 1909. Frank C. Nash, Clerk. Edwd. E. Cleaver, Deputy Clerk.

183 [*Certificate of Clerk of U. S. Circuit Court to Transcript of Record.*]

In the Circuit Court of the United States for the Eastern District of Washington, Southern Division.

No. 24.

UNITED STATES OF AMERICA, Plaintiff,
vs.
SILAS A. GILSON, Defendant.

UNITED STATES OF AMERICA,
Eastern District of Washington, ss:

I, Frank C. Nash, Clerk of the Circuit Court of the United States for the Eastern District of Washington, do hereby certify that the

foregoing typewritten pages, numbered from one to 176, inclusive, constitute and are a complete, true and correct copy of the records, papers, testimony, exhibits and all proceedings had in said action, as the same remain on file and of record in said Circuit Court, and that the same which I transmit, constitute my return to the annexed order of appeal, lodged and filed in my office on the 19th day of November, A. D. 1909.

I also transmit and annex the original Citation in said action.

I further certify that the cost of preparing and certifying
184 said record amounts to the sum of $129.10 and that the same has been paid in full by Frank A. Luse, Esquire, solicitor for the appellant.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Circuit Court, at the city of North Yakima, in said Eastern District of Washington, in the Ninth Circuit, this 13th day of December, A. D. 1909, and of the Independence of the United States of America the One Hundredth and thirty-fourth.

[SEAL.] FRANK C. NASH,
Clerk U. S. Circuit Court for the Eastern District of Washington.
By EDWARD E. CLEAVER, *Deputy.*

Return on Service of Writ [of Citation].

UNITED STATES OF AMERICA,
Eastern District of Washington, ss:

I hereby certify and return that I served the annexed Citation on Appeal on A. G. Avery, U. S. Attorney for the Eastern District of Washington, by handing to and leaving a true and correct copy thereof with him, personally at Spokane, in said District, on the 22d day of November, A. D. 1909.

GEO. H. BAKER,
U. S. Marshal,
By R. D. McCULLY, *Deputy.*

Service	2.00
1 mi.	.06
	$2.06

185 [Endorsed:] #24. United States vs. Silas A. Gilson. Filed in the U. S. Circuit Court, Eastern Dist. of Washington. Nov. 13, 1909. Frank C. Nash, Clerk. Edwd. E. Cleaver, Dep. Entered in General Order Book, Vol. 1, page 103.

In the Circuit Court of the United States for the Eastern District of Washington, Southern Division.

UNITED STATES OF AMERICA, Complainant and Respondent,
vs.
SILAS A. GILSON, Defendant and Appellant.

Citation on Appeal [Original].

UNITED STATES OF AMERICA, *ss:*

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at the term of the United States Circuit Court of Appeals for the Ninth District to be held at the city of Seattle, in the State of Washington in said circuit within thirty days of the date of this Citation, pursuant to an appeal filed in the clerk's office of the Circuit Court of the United States for the Eastern District of Washington, Southern Division, wherein Silas A. Gilson is appellant and the United States of America is respondent, to show cause, if any there be, why the judgment in the said appeal mentioned should not be corrected and speedy justice should not be done to the parties on that behalf.

186 Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 16th day of November in the year of our Lord one thousand nine hundred and nine.

EDWARD WHITSON, *Judge.*

[Endorsed:] #24. In the Circuit Court of the United States for the Eastern District of Washington, Southern Division. United States of America, Plaintiff, vs. Silas A. Gilson, Defendant. Citation on Appeal. Filed Nov. 19th, 1909. Frank C. Nash, Clerk. By Edwd. E. Cleaver, Deputy. Frank A. Luse, Attorney for Defendant, North Yakima, Wash. Entered in General Order Book, Vol. 1, page 102.

[Endorsed:] No. 1800. United States Circuit Court of Appeals for the Ninth Circuit. Silas A. Gilson, Appellant, vs. The United States of America, Appellee. Transcript of Record. Upon Appeal from the United States Circuit Court for the Eastern District of Washington, Southern Division.

Filed December 18, 1909.

F. D. MONCKTON, *Clerk.*

187 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1800.

SILAS A. GILSON, Appellant,
vs.
THE UNITED STATES OF AMERICA, Appellee.

Certificate of Clerk U. S. Circuit Court of Appeals to Printed Transcript of Record.

I, Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing one hundred and eighty-six (186) pages, numbered from one (1) to and including one hundred and eighty-six (186), to be a full, true and correct copy of the Printed Transcript of Record upon Appeal from the United States Circuit Court for the Eastern District of Washington, Southern Division, in the above-entitled case, as the original thereof remains on file and of record in my office, the said copy having been printed under my supervision, pursuant to the provisions of the twenty-third rule of the Rules of Practice of the said Circuit Court of Appeals.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, in the State of California, this eighth day of February, A. D. 1912.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk*.

188 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1800.

SILAS A. GILSON, Appellant,
vs.
UNITED STATES OF AMERICA, Appellee.

Proceedings Had in the United States Circuit Court of Appeals for the Ninth Circuit.

(Addenda.)

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189 At a Stated Term, to wit: The September Term, A. D. 1910, of the United States Circuit Court of Appeals for the Ninth Circuit, Held at the Court-Room, in the City of Seattle, in the State of Washington, on Thursday, the Fifteenth Day of September, in the Year of Our Lord One Thousand Nine Hundred and Ten.

Present:

Honorable William B. Gilbert, Circuit Judge.
Honorable Erskine M. Ross, Circuit Judge,
Honorable William W. Morrow, Circuit Judge.

Thereupon, the following procedings were had:

No. 1800.

SILAS A. GILSON, Appellant,
vs.
THE UNITED STATES OF AMERICA, Appellee.

Order of Submission.

Ordered, Cause argued by Mr. Frank A. Luse, counsel for the appellant, there being no appearance in open Court of counsel on behalf of the appellee, and submitted to the Court for consideration and decision.

190 In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 1800.

SILAS A. GILSON, Appellant,
vs.
THE UNITED STATES OF AMERICA, Appellee.

Opinion U. S. Circuit Court of Appeals.

Frank A. Luse and Allen S. Davis, for the Appellant.
Joseph B. Lindsley, United States Attorney, and Charles A. MacMillan, Assistant United States Attorney, for the Appellee.

Before Gilbert, Ross, and Morrow, Circuit Judges.

GILBERT, *Circuit Judge:*

The United States brought a suit in equity to cancel a patent issued to one Daniel Landis for a tract of land subsequently conveyed by Landis to the appellant, on the ground that Landis did not enter the land under the homestead law in good faith to acquire a homestead for himself, but acted as the instrument of Gilson, to acquire title for the latter's use and benefit. Landis made his entry under Section 2289 of the Revised Statutes, in November,
191 1899, and three years later he commuted under Section 2301 of the Revised Statutes, and in July, 1903, he received a patent. On the day on which he made the commutation entry he gave a mortgage on the land to the appellant, and from that date ceased to live on the land. As soon as the patent issued, he conveyed the land to the appellant. There is convincing evidence in the record that for some time prior to the date of the commutation, there had been an agreement and understanding between Landis and the appellant, whereby the latter was to have the land, and that in pursuance of that agreement, the subsequent mortgage and conveyance were made.

The trial court found that the evidence upon which the commutation entry was allowed, consisting of the sworn statements of Landis and two witnesses, to the effect that the former had lived on the land and made improvements and had cultivated three acres three seasons, was false; that none of the land had been plowed excepting during the third year, and that no crop therefrom was ever harvested; that in fact Landis made only a pretense of settlement, and a showing of improving the land, and served as an instrument for acquiring the title for the use and benefit of the appellant.

It is true there is no very specific testimony that an understanding between Landis and the appellant was had before the entry was made that the title was to be acquired for the latter. The appellant denied that there was any such understanding, and Landis was dead at the time when the testimony was taken, but there were circumstances and testimony clearly pointing to that conclusion,
192 and we cannot say that they were insufficient to sustain the finding of the court below. Landis was past seventy years of age, was decrepit and destitute. The appellant sought him out, took him to the land and pointed it out to him, induced him to settle on it, and negotiated and paid for the relinquishment of a prior settlement thereon. He paid the fees incident to the entry, and the fees when final proof was made. There is evidence that he was cognizant of the nature and extent of the improvements and cultivation made by Landis, and that he was aware of the untruth of the final proofs which were made of such settlement and cultivation. From the time of the entry, Landis was engaged in doing light jobs of work for the appellant, whose house was but a quarter of a mile from the claim in question, but there was no agreement as to wages, and during the whole period of Landis' residence on

the land, the appellant furnished him groceries and supplies, and small sums of money from time to time for his support, all without any security for repayment. There was evidence of statements made by Landis to others, to the effect that he had entered the land to obtain the same for the appellant, and not for himself. On the date of the commutation, the appellant gave him $100., and he surrendered the possession. In view of all these facts, we find no error in the conclusion which the trial court reached, that the patent should be cancelled, and it becomes unnecessary to consider the questions of law suggested by the appellant, who urges that inasmuch as the final proof was not made under Section 2291, but was made under Section 2301 of the Revised Statutes, proof that the claimant had made an agreement before commutation to deed his land
193 to another could not affect the validity of the title obtained from the United States, for the reason that Section 2301 prescribes as requisite to commutation, proof only, that the entryman has made settlement, cultivation and residence for fourteen months, and does not require him to make oath that he has not alienated any portion of the land.

The decree is affirmed.

(Endorsed:) Opinion. Filed Feb. 6, 1911, F. D. Monckton, Clerk.

194 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1800.

SILAS A. GILSON, Appellant,
vs.
THE UNITED STATES OF AMERICA, Appellee.

Decree U. S. Circuit Court of Appeals.

Appeal from the Circuit Court of the United States for the Eastern District of Washington, Southern Division.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Eastern District of Washington, Southern Division, and was duly submitted.

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the decree of the said Circuit Court in this cause be, and the same is hereby, affirmed.

(Endorsed:) Decree. Filed and Entered Feb. 6, 1911. F. D. Monckton, Clerk.

195 In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 1800.

SILAS A. GILSON, Defendant and Appellant,
vs.
THE UNITED STATES OF AMERICA, Plaintiff and Appellee.

Petition for Appeal to Supreme Court U. S.

The above named defendant and appellant, Silas A. Gilson, conceiving himself ag-rieved by the order and judgment entered on the sixth day of February, 1911, in the above entitled action doth hereby appeal from this order and judgment to the Supreme Court of the United States and he prays that this his appeal may be allowed and that a transcript of the record and proceedings and papers upon which said order and judgment was made fully authenticated may be sent to the Supreme Court of the United States.

FRANK A SUSE,
ALLEN S. DAVIS,
Attorneys for Defendant and Appellant, Silas A. Gilson.

North Yakima, Washington.

And now on this 16th day of January, 1912, it is ordered that the appeal be allowed as prayed for in this action and that the appeal bond be fixed at $500 *Dollars.*

WM. W. MORROW,
United States Circuit Judge for the Ninth Circuit.

196 (Endorsed:) Petition for Appeal, Order allowing Appeal and Fixing Amount of Bond. Filed Jan. 16. 1912. F. D. Monckton, Clerk.

197 In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 1800.

SILAS A. GILSON, Appellant,
vs.
THE UNITED STATES OF AMERICA, Appellee.

Assignment of Error.

The appellant in the above entitled cause in connection with his petition for appeal herein presents and files herewith his assignment of error as to which matters and things he says that the decree rendered herein on the sixth day of February, 1911, is erron-ous, to-wit:

I.

That the said Court erred in affirming the judgment of the United States Circuit Court in and for the Eastern District of Washington, Southern Division, ordering the patent to the land described in the complaint canceled.

II.

In holding that the appellant Silas A. Gilson was guilty of fraud in the matter of the making of final proof on the land described in the bill of complaint and entered by Daniel Landis.

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III.

In holding that the Entryman Daniel Landis did not enter the land described in the bill of complaint in good faith.

Wherefore, the appellant prays that the said decree may be reversed, and that the appellant may have an adjudication and decree in his favor as herein specified.

FRANK A. SUSE,
ALLEN S. DAVIS,
Attorneys for Appellant.

(Endorsed:) Assignments of Error. Filed Jan. 16, 1912. F. D. Monckton, Clerk.

199 In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 1800.

UNITED STATES OF AMERICA, Complainant and Respondent,
vs.
SILAS A. GILSON, Defendant and Appellant.

Bond on Appeal.

Know all men by these presents: That, We, Silas A. Gilson as principal and the American Surety Company of New York as surety, are held and firmly bound unto the United States of America in and for a just sum of five hundred dollars ($500.00), to be paid to the said United States of America, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally and firmly by these presents.

Sealed with our seals and dated this Twenty-second day of January, in the Year of Our Lord One Thousand Nine Hundred and Twelve.

Whereas at a session of the United States Circuit Court of Appeals for the Ninth Circuit lately held in and for said circuit in an action pending in said Court on an appeal taken from the Circuit Court of

the United States for the Eastern District of Washington,
200 Southern Division, a decree was rendered against the said Silas A. Gilson, and the said Silas A. Gilson having obtained the consent of the Circuit Court of Appeals to an order allowing an appeal to the United States Supreme Court to reverse the decree aforesaid and a citation directed to the said United States of America is about to be issued citing and admonishing it to be and appear at the Supreme Court of the United States in the City of Washington, District of Columbia:

Now therefore: The condition of the above obligation is such that if the said Silas A. Gilson shall prosecute his appeal to effect and shall answer all damages and costs that may be awarded against him if he shall fail to make his appeal good, then the above obligation is to be void, otherwise to remain in full force and virtue.

SILAS A. GILSON.
THE AMERICAN SURETY COMPANY OF NEW YORK,
By ALLEN S. DAIRS, *Resident Vice Pres.*

Attest:
[SEAL.] FLOYD E. BRISBINE,
Res. Ass't Sec't'y.

The sufficiency of the amount and form and sureties of the foregoing bond is approved this 25th day of January, A. D. 1912.

WM. W. MORROW,
Judge of United States Circuit Court of Appeals for the Ninth Circuit.

(Endorsed:) Bond on Appeal and Order Allowing Same. Filed Jan. 25, 1912. F. D. Monckton, Clerk.

201 In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 1800.

SILAS A. GILSON, Appellant,
vs.
THE UNITED STATES OF AMERICA, Appellee.

Affidavit.

STATE OF WASHINGTON,
County of Yakima, ss:

Silas A. Gilson, Being first duly sworn on oath deposes and says: That he is the appellant in the above entitled action, that he is the owner under a patent from the United States of the following described land lying and being in the county of Yakima and state of Washington, and more fully described as follows to-wit: The East Half (½) of the Northwest Quarter (¼) and the North-

east Quarter (¼) of the Southwest Quarter (¼) of section twenty (20) township Fourteen (14) North, Range Nineteen (19) E. W. M.; that this action was brought to cancel the patent to the said land which was issued by the United States to one Daniel Landis, and that the judgment of this Court confirms a judgment of the United States Circuit Court in and for the Eastern District of Washington, Southern Division, canceling the patent to
202 the said land; that the said land is of the value of not less than Five thousand Dollars, and that the matter in controversy in said suit exceeds one thousand dollars besides costs.

SILAS A. GILSON.

Subscribed and sworn to before me this 28th Day of December, A. D. 1911.

[SEAL.]

E. A. FERRIS,
Notary Public in and for Washington,
Residing at North Yakima, Washington.

(Endorsed:) Affidavit of Silas A. Gilson As to Amount involved. Filed Jan. 16, 1912. F. D. Monckton, Clerk.

203 In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 1800.

UNITED STATES OF AMERICA, Plaintiff and Appellee,
vs.
SILAS A. GILSON, Defendant and Appellant.

Præcipe for Transcript of Record on Appeal to Supreme Court U. S.

To the Clerk of the Above Entitled Court:

You will please prepare a transcript of the complete record in the above entitled cause to be filed in the office of the Clerk of the Supreme Court of the United States and include in said transcript the following records, as follows, to-wit:

The printed record filed in said Court upon the appeal.
The Judgment of this Court affirming the same.
The Opinion of this Court affirming the same.
The Petition for Appeal and the allowance of the same.
204 The Assignment of Error.
The affidavit of Silas A. Gilson as to the amount in controversy.
The Citation on Appeal and proof of service of the same.
The Bond on Appeal and approval of the same.
And any other papers on file in your office necessary to make a complete record in the said Cause.

FRANK A. LUSE,
ALLEN S. DAVIS,
Attorneys for Defendant and Appellant.

(Endorsed:) Præcipe For Transcript of Record On Appeal to Supreme Court U. S. Filed Feb. 2, 1912. F. D. Monckton, Clerk.

205 United States Circuit Court of Appeals for the Ninth Circuit.

No. 1800.

SILAS A. GILSON, Appellant,
vs.
THE UNITED STATES OF AMERICA, Appellee.

Certificate of Clerk U. S. Circuit Court of Appeals to Proceedings and Transcript of Record Upon Appeal to the Supreme Court of the United States.

I, Frank D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing eighteen (18) pages, numbered from and including one (1) to and including eighteen (18), to be a true copy of the Assignment of Errors and of all Proceedings had in the above-entitled case in the said United States Circuit Court of Appeals for the Ninth Circuit, including the Opinion filed therein, as the same remain on file and of record in my office, and that the same in connection with the preceding certified copy of the printed Transcript of Record, constitute a true copy of the complete record in the above-entitled case and the Transcript of Record upon the appeal taken therein from the said Circuit Court of Appeals to the Supreme Court of the United States.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this eighth day of February, A. D. 1912.

[Seal United States Circuit Court of Appeals, Ninth Circuit.]

F. D. MONCKTON, *Clerk.*

206 *Citation.*

In the United States Circuit Court of Appeals for the Ninth Circuit.

SILAS A. GILSON, Appellant,
vs.
THE UNITED STATES OF AMERICA, Appellee.

The President of the United States of America to the above named appellee, The United States of America:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States at the city of Washington, District of Columbia, sixty days after the date of this Citation pursuant to the appeal allowed and filed in the clerk's office of the United

States Circuit Court of Appeals for the Ninth *District* wherein Silas A. Gilson is appellant and the United States of America is Appellee, to show cause if any there be why the decree entered against the said appellant as in said appeal mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable William W. Morrow, Judge of the United States Circuit Court of Appeals for the Ninth Circuit, this 25" Day of January, A. D. 1912.

WM. W. MORROW,
Judge of the United States Circuit Court of Appeals for the Ninth Circuit.

206½ [Endorsed:] Docketed. No. 1800. In the United States Circuit Court of Appeals for the Nineth Circuit. Silas A. Gilson, Defendant and Appellant, vs. The United States of America, Plaintiff and Appellee. Citation. On Appeal to Supreme Court U. S. Filed Feb. 2, 1912. F. D. Monckton, Clerk U. S. Circuit Court of Appeals for the Ninth Circuit Marshal's Docket No. 453.

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Form No. 282.

Return on Service of Writ.

UNITED STATES OF AMERICA,
Eastern District of Washington, ss:

I hereby certify and return that I served the annexed Citation on Oscar Cain, U. S. Attorney for the Eastern District of Washington by handing to and leaving a true and correct copy thereof with him personally at Spokane, Washington in said District on the 30th day of January, A. D. 1912.

W. A. HALTEMAN,
U. S. Marshal,
By R. D. McCULLY, *Deputy.*

Fees; $2.00.

Endorsed on cover: File No. 23,082. U. S. Circuit Court Appeals, 9th Circuit. Term No. 207. Silas A. Gilson, appellant, vs. The United States. Filed March 6th, 1912. File No. 23,082.

IN THE

Supreme Court

OF THE

United States

SILAS A. GILSON,
Appellant,

vs.

THE UNITED STATES,
Appellee.

No. 201.

BRIEF OF APPELLANT

UPON APPEAL FROM UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

IRA P. ENGLEHART,
ALLEN S. DAVIS,
GEORGE B. HOLDEN
All of North Yakima, Washington,
Attorneys for Appellant.

SUPREME COURT OF THE UNITED STATES

No. 207

SILAS A. GILSON, APPELLANT

vs.

THE UNITED STATES

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

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STATEMENT OF THE CASE.

This is an action by the United States as plaintiff against appellant, Silas A. Gilson, as defendant, to cancel the patent to one hundred and twenty acres of land lying on the eastern slope of the Cascade Mountains in Yakima County, State of Washington. The bill alleged that on November 13th, 1899, one Daniel Landis, at the instigation of appellant, made a homestead entry upon this land in the United States Land Office for said district, and on November 21st, 1902, commuted the homestead entry and purchased the land, in virtue of which, patent was issued to Landis for said land on the 21st day of July, 1903; that November 21st, 1902, Landis gave Gilson a mortgage on said land and on the 23d day of July, 1903, conveyed the same to him by deed; that Landis did not enter the land in good faith, but for the purpose and with the intent of getting title to the land for Gilson, and at his instigation, and that the residence and improvements made by Landis were not sufficient; that Landis' action in procuring issuance of patent to himself was fraudulent and that Gilson was a party to such fraud. The defendant denied all the allegations of fraud and insufficiency of residence and cultivation, and trial

was had on the merits before the United States Circuit Court for the Eastern District of Washington, Southern division. None of the testimony was taken before the court, but on stipulation, was taken before a special examiner.

The court found that Landis did not enter the land in good faith, but fraudulently for Gilson's benefit; that Gilson was a party to the fraud and by its decree cancelled the patent.

Gilson appealed to the United States Circuit Court of Appeals for the Ninth Circuit and, on hearing, the decree was affirmed.

SPECIFICATION OF ERRORS.

I.

The court erred in finding, as a matter of fact, that Daniel Landis did not apply to enter the land described in the complaint and decree in good faith and for his own exclusive use and benefit.

II.

The court erred in finding that said Daniel Landis committed fraud in making final proof before the Register and Receiver of the United States Land Office in entering said land.

III.

The court erred in holding, as a matter of fact, that the defendant in this action, Silas A. Gilson, had any knowledge or notice of any fraud committed

by said Daniel Landis in entering said land, if any such fraud was by the said Landis committed.

IV.

The court erred in not dismissing this action.

V.

The court erred in entering a judgment cancelling the patent.

BRIEF OF ARGUMENT.

Our contentions may be summarized as follows:

I.

The evidence having all been taken before a special master, the rule that appellate courts will give great weight to findings of trial courts on questions of fact does not apply.

II.

After Landis had made his homestead filing, he had a right to make an agreement to sell the land and then commute his entry and purchase the land. He did not make final proof under the homestead statute, but purchased the land under Section 2301 of Revised Statutes.

Adams vs. Church, 193 U. S., 510.

Williamson vs. U. S. 207, U. S. 425.

III.

The evidence is insufficient to justify the conclusion that there was any agreement between Landis and Gilson before Landis filed on the land that Lan-

dis was to sell the land to Gilson. Even though Landis was guilty of fraud, there is insufficient evidence that Gilson was a party thereto to authorize cancellation of patent after title thereto has vested in him.

ARGUMENT.

This case, being largely one of fact, we are confronted at the outset with the rule that appellate courts will give great weight to findings of trial courts on questions of fact, where the testimony of witnesses was given in the presence of the judge. The reason for this rule has been too often stated to need repetition. There are many things in the demeanor of a person testifying that add to or detract from the weight that would otherwise be given to the language they employ. But when the reason for the rule fails, the rule itself fails, and so it is that this court is in as good a position to judge of the facts and the credibility to be given the various witnesses as the trial court, none of the witnesses having appeared before him, but having been examined before a special master.

The land of which the patent is sought to be cancelled was not entered by virtue of the homestead law, but was purchased of the United States under Section 2301 of the Revised Statutes, which section allows any one who has made a homestead entry under Section 2289 after fourteen months to make proof of SETTLEMENT, RESIDENCE and CUL-

TIVATION for such period of fourteen months, pay the minimum price for the same and receive a patent.

The only proof required is of settlement, residence and cultivation, and unless there was fraud in the proof as to one of these requirements, then this judgment is wrong, and no agreement made by Landis with Gilson for the sale of the land to Gilson would violate the statute unless such agreement was made before the homestead filing was made. The question of the validity of contracts to sell land prior to the final proof and entry of the same has been before the Supreme Court of the United States in three different kinds of entries of public land by virtue of three separate statutes.

First. In Anderson vs. Carkins, 135 U. S. 483, 34 L. Ed. 272, the court holds that where land was obtained from the United States under a homestead entry where a contract was made after the land was filed on and before final proof, that such contract was void and could not be enforced, but the decision is put on the express ground that the statute required an affidavit of the entryman that he had not alienated any part of the land except as provided in the statute.

Second. In the case of Adams vs. Church, 193 U. S. 510, 48 L. Ed. 769, the court held under the Timber Culture Law that notwithstanding the statute required the entrymen to make an affidavit when he made his filing that he was taking the land for his own exclusive benefit and not for the purpose of

speculation or directly or indirectly for the use or benefit of any other person, that because there was no provision in the act for an affidavit when he made final proof and entered the land, that he not alienated any portion of the land, that a contract to convey the land made after he made his filing and before final proof was valid and could be enforced, making the distinction between the two statutes that one required an affidavit at the time of final proof that the land had not been alienated and that the other did not.

Third. In Williamson vs. The United States, 207 U. S. 425, 52 L. Ed. 278, the court followed the case of Adams vs. Church just cited and held, under the Timber and Stone Act, that there was nothing in the statute that required an affidavit upon making final proof that no part of the land had been alienated and that it was not perjury to make such an affidavit, though it was required by the rules of the department. United States vs. Biggs, 211 U. S. 507; United States vs. Kettenbach, 175 Fed. 463.

Then the question is, does a sale of the land by the entryman of the land embraced in a homestead entry come under the rule adopted by the Supreme Court as to timber culture entries and entry under Timber and Stone Act, or the rule adopted as to final proof of homestead entries, where the entryman does not make final proof, but purchases the land?

The principal reason given by the court for holding that a contract to sell land embraced in a home-

stead, when such contract is made after the filing and before proof is void, is that such a contract cannot be performed without perjury. The court, in Anderson vs. Carkins, supra, said:

"And section 2291, which prescribes the time and manner of final proof, requires that the applicant make 'affidavit that no part of such land has been alienated except as provided in section 2288,' which is for 'church, cemetery or school purposes, or for the right-of-way of railroads.'

The law contemplates five years' continuous occupation by the homesteader with no alienation except for the named purposes. It is true that the sections contained no express prohibition of alienation and no forfeiture in case of alienation, yet under them the homestead right cannot be perfected in case of alienation or contract for alienation without perjury by the homesteader. * * * * * There can be no question that this contract contemplated perjury on the part of Anderson, and was designed to thwart the policy of the government in the Homestead Laws. * * * * * Such a contract is against public policy and will not be enforced in a court of equity."

But the statute does not require such an affidavit in case the homestead entry is commuted and the land purchased of the government. The final proof in such cases is not made under Section 2291, R. S., which requires an affidavit of non-alienation, but under Section 2301, R. S., which was passed in 1891, and is as follows:

"Nothing in this chapter shall be so construed as to prevent any person who shall hereafter avail him-

self of the benefits of Section 2289 from paying the minimum price for the quantity of land so entered at any time after the expiration of fourteen months from the date of such entry and obtaining a patent therefor upon making proof of settlement and of residence and of cultivation for such period of fourteen months."

This statute passed long after the homestead statute by its terms excludes the operation of the homestead statute in cases where the entry is cummuted and a cash entry of the land made. The words, "Nothing in this chapter shall be so construed to prevent any person from paying the minimum price for the land and obtaining a patent," and naming the proof that they must make in order to obtain such patent makes that section the law of the case to the exclusion of all other laws found in that chapter.

Now, in order to rightfully purchase the land, Landis had to show just these things and no more, to-wit: that he had made a settlement on the land; that he cultivated and resided on the land for fourteen months next before he made proof, and if he made such proof, he was entitled to a patent of the land. And if he had, at some time after he made his homestead entry, and before he commuted and paid for the land, made a written contract to deed the land to Gilson, under the authority of Adams vs. Church, 193 U. S. 510, such contract would be valid and would be enforced by the court. In this connection, we wish to call the court's attention to the fact that any

construction of the statute as it stood prior to March 8th, 1891, has now no force, for prior to that time, Section 2301 provided that proof should be made as in pre-emption rights and the pre-emption law provided for an affidavit of non-alienation, R. S. 1878, Section 2262, while the statute at present states just what the entryman must prove in order to purchase the land, that is: settlement, cultivation and residence for fourteen months. There is no requirement that the applicant to purchase shall make oath that he has not alienated any portion of the land, and as is said in Adams vs. Church, 193 U. S. 510, on page 516:

"The policy of the government to require such affidavit when it intends to make it a condition precedent to granting a title was indicated in the homestead act, and could readily have been pursued by a similar provision in the timber culture act if it was intended to extend the principle of that statute."

And Congress having failed to incorporate such a provision in the act allowing the purchase of the land by the entryman, it must be presumed that no such restriction was intended.

Section 2301 simply gives to the homestead entryman a right to abandon his homestead and to purchase the land embraced in his homestead entry under certain restrictions contained in said section and when the statute says that nothing in that chapter shall be construed to prevent the purchase of the land upon making certain proof, it certainly leaves

nothing to implication, but confines the proof to the matters enumerated in that section.

If this is the law, then, in order to cancel this patent on the ground that Landis had agreed to sell the land to Gilson, it must be shown by clear and convincing evidence that such agreement was made before Landis filed on the land in November, 1899. And the only evidence of any kind on that question are the two sworn statements made by Landis that he had not made any such contract (pages 53, 57 and 64) and of Gilson (page 67).

This land was purchased under Section 2301, R. S. U. S. Under this section one may abandon his rights under the homestead law and purchase the land, and by so doing he makes a new and original entry.

Thrift vs. Delaney, 69 Cal., 188;

Johnson vs. Lumber Co., 24 Ore., 182;

U. S. vs. Howard, 37 Fed., 666.

The statute originally provided that the claimant should make proof of settlement and cultivation, as provided by the law granting pre-emption rights, and under this provision the Land Office probably had the right to require the claimant to make oath that he had not alienated any of the land as required by the pre-emption statute; but under the amendment of March 3d, 1891, this provision was omitted, and the settler is now allowed to purchase the land by simply making proof of settlement, residence and cultivation for fourteen months.

See Fed. Stat. Annotated, Sec. 2301, 26 Stat. at Large, 1098.

Such being the statute, the Land Department had no authority to require an affidavit or proof that the land has not been alienated. The making of such affidavit and statement in final proof would not be perjury and such contract would be valid.

Savage vs. Worsham, 72 Fed. Rep. 601;

U. S. vs. Howard, 37 Fed. Rep. 666;

Adams vs. Church, 193 U. S. 510, 48 L. Ed. 789;

Williamson vs. United States, 207 U. S. 425, 51 L. Ed. 294;

As to the agreement to give a mortgage, it is covered by the foregoing case and is valid if given before patent and even before final proof.

Stark vs. Morgan (Kas.), See 6 L. R. A. (N. S.) 934, and cases cited in opinion and notes.

Orr vs. Stewart, 67 Cal. 275, 7 Pac. Rep. 693.

Stewart vs. Powers, 98 Cal. 514, 33 Pac. Rep. 486.

It would seem from reading the Trial Court's opinion that he thought that it was his duty to cancel the patent if he was not satisfied with the amount of the improvements, but such is not the law. Says the Supreme Court of the United States in U. S. vs. Budd, 144 U. S.

"But after all, the question is not so much one of law for the courts after the issue of the patent, as of fact, in the first instance, for the determination of

the land officers. The courts do not revise their determination upon a mere question of fact. In the absence of fraud or some other element to invoke the jurisdiction and powers of a court of equity, the determination of the land officers as to the fact whether the given tract is or is not fit for cultivation, is conclusive. There is, in such cases, no general appeal from the land officers to the courts, and especially after the title has passed, and the money been paid."

And in the same case, the court says that the rule is, that when in a court of equity it is proposed to set aside a written instrument for frauding the execution of the instrument itself, that the testimony on which it is done must be clear, unequivocal and convincing and that the rule should be even stronger when the government attempts to set aside a patent. In fact, the procedure in the sale of public land under this statute is far more like a proceeding in court than an ordinary sale and deed between individuals. Before a patent can issue, notice must be given by publication in some newspaper in the county where the land is situate, describing the land, giving the name of the settler and his witnesses and the time when he will offer proof, and on the return day he must appear with two witnesses before the Land Officers, who act as a quasi court, and the claimant and his witnesses are examined by the agents of the United States and their testimony taken down and signed by them. The Land Officers pass on the sufficiency of it, and then it is referred to the General Land Office, where, if it is found

sufficient and regular, it is passed and a patent issued. This is, in everything but name, an adjudication and judgment, and to set aside a patent issued in such a formal manner, there certainly should be evidence of fraud that is conclusive. See also United States vs. Clark, 200 U. S. 601; 50 L. Ed. 613; United States vs. Biggs, 211 U. S. 507, 53 L. Ed. 305.

Counsel for the Government in their brief in the Court of Appeals recognize the rule as long ago announced in Maxwell Land Grant Case and thereafter adhered to, that no written instrument, much less a patent, will be set aside or annulled for fraud or mistake in the execution of the instrument itself upon a bare preponderance of evidence, but only on evidence which produces conviction and is clear, unequivocal and convincing, and quote from the case as follows:

"When in a court of equity it is proposed to set aside, to annul or to correct a written instrument for fraud or mistake in the execution of the instrument itself, the testimony on which this is done must be clear, unequivocal and convincing, and it cannot be done upon a bare preponderance of evidence which leaves the issue in doubt; * * * but it should be well understood that only that class of evidence which commands respect, and that amount of it which produces conviction, shall make such an attempt successful."

Max well Land Grant Case, 121 U. S., 325.

The same rule has been laid down in many other cases, among them are:

Colo. Coal & I. Co. vs. U. S. 123, U. S. 307, 31 L. Ed. 186.

U. S. vs. Stinson, 197 U. S. 200, 49 L. Ed. 725.

Is the evidence sufficient within this rule to justify the conclusion that there was an agreement between Landis and Gilson before Landis filed on the land that after patent he was to sell the land to Gilson? The government contends it is and seeks to establish this contention by circumstances and alleged admissions. Let us first consider the testimony of admissions. The references are to the page of transcript of record. The testimony was taken in 1908, six to eight years after the alleged admissions were made with no claim that the attention of the witnesses had been directed to the admissions between the date of making them and the date of testifying thereto. Charles A. Bryant testified (page 23), on direct examination in behalf of the plaintiff, as follows:

"Q. Did you ever talk with him anything about this land? (referring to defendant).

A. I asked him in the spring of 1902, I think it was in March. I was going over there and I saw Mr. Gilson or a person living down in the building. I didn't know who owned the land at that time, and I never had seen anybody there but this time. It was in the spring, and I seen someone down there and I went down and Mr. Gilson was living there, and I had met Mr. Gilson once before that.

Q. You mean Mr. Gilson was living on the land we are talking about?

A. No, sir; living on lands that he owned, and I asked him who owned different pieces of land up there, and this piece was one.

Q. That is the piece in this case?

A. Yes, sir; and he told me the party's name, and said he was stopping at that time down in the valley. I asked him if he would sell it?

Q. What party did he say it was?

A. He said it was Mr. Landis, and he said he could not; that he owned the building and that he was going to get the land, and that was all that he ever said to me about it."

This testimony was given before the examiner on August 22d, 1908. Mr. Bryant was again called on the 25th day of September, 1908, and testified (page 34) in reference to his former testimony, as follows:

Q. "Now, in your answer you say that Mr. Gilson said that it was Mr. Landis, and he could not—that he owned the building and was going to get the land?

A. That is what he told me.

Q. What do you mean by that? That Mr. Gilson owned the building and Mr. Landis the land?

A. Mr. Gilson owned the building and Landis the land and had agreed to sell it to Mr. Gilson."

And again (page 34):

"Q. In that conversation Mr. Gilson told you he owned the building?

A. Yes, sir.

Q. And that he had an agreement with Landis by which he was going to get the land?

A. Yes, sir."

It will be observed that in his testimony of August 22d, Mr. Bryant stated that Gilson said he was "going to get the land," and that was all he said to the witness about it. In his testimony of September 25th, he goes farther and testifies that Mr. Gilson, at that time, said that Landis had agreed to sell it to Mr. Gilson, and in answer to the question, "Gilson said he had an arrangement with Landis by which he was going to get the land," he answered, "Yes, sir." But on cross-examination (page 35), when asked about his former testimony that Gilson said "he was going to get the land and that was all he ever said to me about it," he answered again, "Yes, sir," so that it is evident that the witness is testifying to his conclusion when he says that "Gilson said he had an agreement with Landis." The witness drew no distinction between the alleged statement "I am going to get the land" and "I have an agreement by which I shall get the land."

This witness testified that this conversation was in the spring of 1902, but he is unable to fix the date by any circumstance, simply depends upon his memory (page 24, near bottom). If he is as careless in fixing the date as he is in repeating what he claimed Gilson said, he might easily be mistaken a year, it being remembered that he was testifying to

occurrences happening years before. But even though Gilson said he had an agreement with Landis to buy this land the statement falls far short of proving that this was an agreement made before Landis made his entry.

The witness, Fred Seymor, testified (page 27):

"Q. They were getting witnesses for final proof?

A. Yes, sir.

Q. Did Mr. Gilson, at that time, say anything about he was going to get the place?

A. What he said, he was furnishing Landis money and told in the neighborhood all about what it would cost him and said he was giving Landis One Hundred Dollars and was getting the property.

Q. Did he say what Landis was going to do with the property when he got it?

A. No."

The very nature of the language employed here, viz: "Told in the neighborhood," indicates that this witness was testifying to matters rumored about the neighborhood, and not to any specific statement made by Gilson in his presence. No date is given when these alleged statements were made by Gilson, and the language is so loosely employed that it might very easily be explained on a theory consistent with Gilson's innocence of any fraud.

D. T. Meyer, a witness for the plaintiff, testified (page 32):

"Q. Did you ever talk with Mr. Gilson about the place?

A. I think only once.

Q. Well, make it short. Did he ever say anything to you about owning the place?

A. No, I don't think he ever did. I told him once —we had a little dispute over some money and I told him he had got that land fraudulently and he turned off and walked from me and wouldn't answer me, and that is about the only conversation I have had with Mr. Gilson in regard to the land."

In other words, because Gilson, like a law-abiding citizen, refused to further continue a dispute, but turned and walked away when charged with procuring this land fraudulently, the charge is presumed to be true. Such evidence is not worthy of consideration. This witness, at this time, made no reference to any statements made by Landis to him with reference to any agreement between Landis and Gilson. He was recalled as a witness on the 25th day of September to testify in this regard and testified that he knew Mr. Landis for a couple of years (page 35); that the first conversation he had with him in regard to this land was at Brooks' house; that Mr. Brooks was present at these conversations. At page 38, he testified:

"Q. Who was present when you had these conversations, anybody?

A. Mr. Brooks was present. The first time, I think I ever heard Mr. Landis express himself, it was

in Brooks' house and I think he heard the conversation. I think he did."

He further testified that Landis frequently told him, both before and after proving up, that he was getting $100.00 for his homestead right from Gilson, but when asked to state the date, he was unable to tell whether he had the conversation in 1901, '02, '03 or '04 (page 37), so that it were as easy that these statements were made after Landis had sold the homestead as before, and that he had received $100.00 instead of was going to receive $100.00, and it is but natural that an aged and childish man, like Landis, might have made as many and all the statements as are attributed to him by this witness, who testified (page 38) that Landis talked childishly. If these conversations between Landis and Meyer occurred in Mr. Brooks' house in Mr. Brooks' presence, as testified to by Meyer, it is strange that Brooks did not testify to them, and a search of his testimony fails to disclose any reference to any statement made to him by Landis, although he said Landis lived with him one winter before he proved up on the land (pages 29 and 39).

It seems also strange that the witness, Meyer, did not testify, when first called in August, to these conversations. From his own testimony, it appears that he had some trouble with Gilson (page 32) and was able to think of far more damaging testimony on being called the second time than he recalled at the first hearing, yet only when a leading question was

put, virtually putting the answer into his mouth, did he testify to any agreement being made between Mr. Gilson and Mr. Landis previous to proving up (page 39).

The witness, Joseph H. Lancaster, for the plaintiff, testified that Gilson offered to furnish him money to prove up on his entry; that he would do the same with him as he had with Landis; that he offered him $150.00 or $250.00, witness couldn't state which (page 45). About the middle of page 45, he testified:

"Q. Did he tell you what he had done with Mr. Landis?

A. He told me that he offered him—whether he had given him $150.00 or $250.00—it was either one of the two he had given him; that he would make the same proposition to me that he had with Mr. Landis."

The witness, Meyer, testified that Landis told him he received $100.00 from Gilson (page 36), and there is nothing in the testimony of either to indicate any unlawful agreement.

The testimony referred to and quoted constitutes substantially all the testimony offered to show an agreement between Landis and Gilson. Gilson testified (page 67) positively denying any agreement whatever. Landis, in making final proof, also positively testified that there was no agreement (page 64).

Are the statements of these three witnesses, Bryant, Seymor and Meyer, of alleged admissions of Gil-

son, inconsistent with each other as they are, unnatural in their nature, meagre and rambling, sufficient to overcome the positive denial under oath of the defendant, Gilson? Are the statements of the witnesses, Meyer and Lancaster, as to alleged admissions of the entryman, Landis, likewise inconsistent, unnatural, contradictory and rambling, sufficient to overcome the sworn testimony of Landis before the Register, particularly when more than six years had intervened and in the meantime Landis had died?

How easy it is for a witness testifying six or eight years after an occurrence of this sort to confuse what a witness said of a transaction after it was closed with what he said about it while it was pending. For instance, these witnesses may have had an idea at the time Landis was living on the land that he was merely an agent of Gilson and that an agreement that Landis should convey the land to Gilson existed between them. Landis proves up on the land; patent issues to him; he sells to Gilson. This result is sufficient to confirm their suspicions. Then Landis, an old and childish man, ramblingly (page 38) tells how much Gilson paid him for the land; what he actually received; then six or eight years intervene. The witnesses perhaps unintentionally confuse in their minds what they thought the arrangement was with what the party afterwards told them did happen, and they come in and testify, not as to what was actually said to them in fact existed, but to their conclusions as confirmed by what ultimately resulted.

But it is said that not only the testimony of these witnesses as to these alleged admissions, but the circumstances point to the conclusion that there was an agreement between Landis and Gilson. Let us examine the circumstances. Judge Gilbert in his opinion (pages 108 to 109) says:

"Landis was past seventy years of age, was decrepit and destitute. The appellant sought him out, took him to the land and pointed it out to him, induced him to settle on it, and negotiated and paid for the relinquishment of a prior settlement thereon. He paid the fees incident to the entry, and the fees when final proof was made. There is evidence that he was cognizant of the nature and extent of the improvements and cultivation made by Landis, and that he was aware of the untruth of the final proofs which were made of such settlement and cultivation. From the time of the entry, Landis was engaged in doing light jobs of work for the appellant, whose house was but a quarter of a mile from the claim in question, but there was no agreement as to wages, and during the whole period of Landis' residence on the land, the appellant furnished him groceries and supplies and small sums of money from time to time for his support, all without any security for repayment."

The testimony shows that Gilson had considerable land in the vicinity and kept stock there; that he needed somebody to watch the stock and went to Sheriff Grant at North Yakima and asked him if he knew of an old man that could come up there and look after things while Gilson was away; that Gilson wasn't able and didn't have money to pay a man good

wages for staying there (pages 74 and 75, also 85). Grant referred him to Landis and it was arranged that Landis should go out there and work for Gilson and incidentally take up a piece of land; that Gilson would furnish groceries and assist Landis in every way possible in acquiring title to the land (pages 69 to 77, also 85); that Gilson, in pursuance of this arrangement, furnished Landis money for groceries and for making his proof, kept an accurate account of Landis' indebtedness, but took no security (page 72); that when Landis made his proof and commuted Gilson furnished the money and took a mortgage as security; that Landis tried to sell the land, but being unable to find a purchaser, deeded it to Gilson shortly after receiving patent (page 67).

From these circumstances, together with the testimony of alleged admissions, it is contended that fraud is established, which demands cancellation of patent. Fraud will not be presumed. He, who alleges it, must prove it by clear, unequivocal and convincing proof. It is not unusual that a settler of the frontier extends credit to another frontiersman without security other than the situation in which he finds him. That to a man engaged in business in city life might be deemed hazardous and foolish. Here were men who probably became better acquainted with each other in two or three days than a resident of a city would become acquainted with his next door neighbor in as many years. They were men of simple life. They had no neighbors, no asso-

ciates. There might have been, and doubtless was, a feeling of trust between them, natural enough to the situation, but unknown to the hardening life of the city business man. The writer of this brief has had some chance to observe the daily life of the "lumber jack" of the northern woods. It is not an unusual occurrence for one "jack" to stake another for all the money he possesses, perhaps on the acquaintance of only a few hours, and to the credit of that class, known as "lumber jacks," let it be said that confidence under such circumstances is seldom misplaced. Gilson says that he trusted this man. He swears that there was no agreement between him and Landis. Landis, dead at the time of taking testimony in this suit, swore at the time of making final proof that no agreement existed with Gilson or anyone. Who is going to say that because Gilson extended credit to this old man without security, and held out a helping hand to this needy frontiersman, that the both of them were trying to defraud the United States of America and that they perjured themselves, Landis for the paltry sum of $100.00 in addition to a meagre existence for two or three years, and Gilson to get his land by paying more for it than it was actually worth? And the testimony is undisputed that this land cost Gilson more than it was worth at the time; Gilson so testified (page 68); Fayenne so testified (page 87); nobody contradicted it.

Now, it is a matter of common knowledge that in a new country when public lands are being constantly entered under the homestead law, that the ordinary

settler knows perfectly well that the land embraced in any entry cannot be sold, or an agreement made to sell it prior to final proof, and that on final proof the witnesses are examined as to this very point, and it is in evidence that Gilson had taken a homestead and so must have known that witnesses would be asked, when Landis made final proof, as to whether Landis had made any agreement to sell the land. It is, therefore, incredible that Gilson should, if he had an agreement to buy the land, tell a man whom he was trying to get to act as a witness, of that fact, and not only that, but publish that man's name as one of the witnesses.

Now, all of the direct testimony of the plaintiff as to any agreement between Gilson and Landis is the testimony of these admissions, and it will be profitable to look into the value of this kind of evidence generally. In the first place, witnesses can never remember all of the conversation and repeat it word for word, and, therefore, the court is in possession of a part, and usually a very small part of what is said, and there is always the probability that the part not remembered would greatly modify the meaning of what is remembered. Second, the witness that can remember the exact words used in a conversation that took place six years before is such a rarity that when one claims that he can, we take it "with a grain of salt." Third, evidence of this kind is almost invariably the impression that the witness got from the conversation.

Now, men and courts often differ as to the meaning of the most carefully written instrument, and it goes without saying that a witness that hears a conversation frequently does not get the impression that the speakers intended to convey.

Fourth, human memories are fickle and frail, and frequently one part of a conversation is remembered, while a part of such conversation that essentially modifies it, is entirely forgotten.

Fifth, witnesses frequently color their testimony and slightly change the phraseology to suit their side of the case, and even perfectly honest witnesses do this unconsciously.

Taking all of these things together, such evidence is the weakest that can be produced in court, and when it is attempted by that kind of evidence to set aside a written grant by patent of real property, the courts always refuse, and we do not believe that the counsel for plaintiff can cite a single case when a patent or deed or will, or any paper of similar kind, was ever set aside on that kind of proof.

As to proof of facts by the oral declaration of a party, the courts have always characterized them as the weakest kind of evidence. Says Moore in his work on Facts:

"No species of testimony is more emphatically denounced in judicial opinions as weak and dangerous than testimony to declarations or admissions in loose or random conversations."

Moore on Facts, Sec. 1169.

Testimony to oral declarations of any person, including admissions of a party, is regarded not only as unreliable, but dangerous, and is invariably received with caution because of the danger both of misunderstanding and misrecitation of what was said. Moore on Facts, 1148.

In a somewhat extended experience of jury trial, we have been compelled to the conclusion that the most unreliable of all evidence is that of oral admissions of the party—when we reflect upon the inaccuracy of many witnesses in their original comprehension of a conversation, their liability to mingle subsequent facts and occurrences with the original transactions, and the improbability of recalling the precise terms used by the party, or of translating them by exact equivalents, we must conclude that there is no substantial reliance in this kind of testimony.

Redfield, C. J., Note to Greenleaf on Evidence, 12 Ed., Sec. 200.

Of all kinds of evidence that of extra judicial and casual conversation is the weakest and most unsatisfactory. Such words are often spoken without serious intention and they are always liable to be mistaken and misremembered, and their meaning is apt to be disrepresented and exaggerated.

11 Starkie on Evidence, 7 A. M. Ed. 549.

See also Wigmore on Evidence, Sec. 2094, pages 281 and 223.

Such testimony is the most dangerous that can be admitted in a court of justice and the most liable to abuse.

Chancellor Walworth in Law vs. Merrills, 6 Wend. 268, cited in re Kaldenberg, 105 Fed. Rep. 233.

Parole evidence may be offered of confessions (Species of evidence of which it has often been said, it is hard to disprove and easy to fabricate) applicable to such remote times as may leave no means to trace the nature, extent or origin of the claim, and thus opens the way for the most oppressive charges.

Justice Story in Bell vs. Morrison, 26 U. S. 359, 7 L. Ed., page 178.

This is an action to set aside a conveyance of land made with the utmost formality after a hearing held upon notice and upon the sworn statements of three witnesses. Speaking of an attempt to set aside such an instrument, C. J. Cooley says:

"The law does not permit the title to rest in parole, nor does it allow anything which is evidenced by the deeds to be changed by parole, testimony of promise, agreement or understanding. But by this doctrine, while the instruments of title are conceded to be indisputable, they are allowed to be set aside on parole evidence of the owner's admissions and statements, though this species of evidence is confessed to be the least reliable which the laws admit. The best evidence of title is thus allowed to be overcome and set aside by the weakest.

A conversation misunderstood or falsely reported controls the most perfect chain of conveyance and

any estate is liable to be taken from the owner on the impression which a jury receives from the preponderance of evidence concerning words which witnesses may have imperfectly heard or incorrectly understood, or the purport of which they may have unintentionally colored or purposely wrenched from its real meaning in the mind of the speakers."

Hays vs. Livingston, 34 Mich., page 396.

Testimony with regard to verbal statements should be received with great caution. The evidence, consisting as it does, in the mere repetition of oral statements, is subject to such imperfections and mistakes in consequence of the person speaking not having clearly expressed his own maning, or in consequence of the witness having misunderstood him, it frequently happens that the witness by unintentionally altering a few of the expressions really used gives an effect to the statement completely at variance with what the person in fact did say.

Ellis vs. Oil Co., 110 N. W., on page 24.

As a general rule evidence of admissions should be received with caution. The unintentional change of a single word often gives an entirely different meaning to what may have been said.

Oberholtzer vs. Hazen, 70 N. W., 207.

From these citations it will be seen that proof of such admissions as are contained in this record are considered by the courts as the weakest kind of evidence that can be produced, while the rule of evidence in cases of this kind is that the evidence must be

the strongest and best. Says the Supreme Court of the United States:

"To cancel a patent, the evidence of fraud must be clear, unequivocal and convincing and clearly sustained by the proof."

U. S. vs. Maxwell, 211 U. S. 325, 30 L. Ed. 949.

Only that class of evidence that commands respect and the amount which produces conviction, clear, convincing and unambiguous.

Colo. Coal & I. Co. vs. U. S. 123, U. S. 307, 31 L. Ed. 186.

In this last case, which was reversed by the U. S. Supreme Court, we think the evidence was stronger than in the case at bar.

See also to same effect, U. S. vs Stinson, 197 U. S. 200, 49 L. Ed. 725, in which the court says:

"The government is subjected to the same rule respecting the burden of proof, the quantity and character of evidence, the presumptions of law and fact, that attend the prosecution of a like action by an individual. 'It should be well understood that only that class of evidence which commands respect, and that amount of it which produces conviction, shall make such an attempt successful.' * * * *

"The conduct of Stinson does not indicate a consciousness of wrongdoing. He remained a resident of the locality, the title was not transferred, there was no attempt to place in the hands of a bona fide purchaser,—no such conduct as would ordinarily characterize a conscious wrongdoer."

All of this can be truthfully said of Gilson.

The evidence of the plaintiff is clearly insufficient to make such a case as is required under the foregoing authorities without considering the defendant's evidence. And Gilson denies making the statements and denies the allegations that he had any agreement or misunderstanding with Landis whereby he was to get the title to the land. The undisputed evidence in the cause shows that the land was not worth more than the Government price; (pages 69 and 87) this being the case, there could be no possible object in conspiring to defraud the government to get the land, for why should one commit fraud and run the risk of punishment to get an opportunity to buy land at its full value.

There is one fact that shows that it is extremely improbable that there was any understanding between Gilson and Landis prior to the time that Landis filed on the land that Gilson should get the land, and that is the time that elapsed after the land was filed on until final proof was made. The filing was on November 13th, 1899, while final proof was not made until November 22d, 1902, three years after. Now he could have commuted the homestead entry just as well in fourteen months, and it is not likely, if Gilson was keeping the old man so that he could make proof and get the land, that he would have waited almost two years longer than was necessary before proving up and getting the land. Now Gilson would hardly have waited all of this time, supporting

Landis, taking the risk of Landis dying or getting sick of his bargain and throwing up the whole matter, but would have had proof made at the earliest possible date.

So, too, the smallest of the improvements are themselves a strong circumstance to show that there was no such agreement, as, if Gilson was the party in interest and wanted the land badly enough to try to get it fradulently he would probably have taken no risks of the entry being cancelled for lack of improvements, or of the rejection of the final proof for the same reason; while Landis, being too poor to make any further improvements, it was just what would have been expected of him.

Where a purchaser finds that a patent has been issued he is not required to look behind it.

Lea vs. Polk County Copper Co., (U.S.), 16 L. Ed. 203;

Bagnell vs. Broderick, (U. S.), 10 L. Ed. 235;

U. S. vs. California & Oregon Land Co., (U. S.) 37 L. Ed. 354.

If patent issue before attack, it is immaterial whether purchase is made before or after issuance of patent.

U. S. vs. Clark, 125 Fed. 774.

As to bona fide purchaser of public land, see U. S. vs. Detroit Timber & Lumber Co., 131 Fed. 674. 50 L. Ed. 499.

We, therefore, ask that the judgment of the lower court be reversed and it be ordered that the case be dismissed.

Respectfully,
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In the Supreme Court of the United States.

OCTOBER TERM, 1913.

SILAS A. GILSON, APPELLANT,
v.
THE UNITED STATES.
No. 207.

ON APPEAL FROM UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT.

This is a suit by the United States to cancel a patent issued under the homestead laws to one Daniel Landis for 120 acres of land in the North Yakima land district, in the State of Washington.

Landis made entry of the land November 13, 1899, and offered commutation proof under section 2301, Revised Statutes, November 21, 1902, upon which a patent was issued to him July 21, 1903 (R. 5). The bill alleged that the affidavit made by Landis upon which his original application was allowed was false and fraudulent in that he did not make his application in good faith for the purpose of actual settlement and cultivation,

but that it was made for the benefit of Silas A. Gilson, with whom the entryman was then acting in collusion for the purpose of giving the defendant Gilson the benefit of the entry (R. 3); that the proof of settlement and cultivation offered in support of the entry was also false and fraudulent in that the entryman had not made settlement on November 13, 1899, or at any other time; had not built a house except a partially completed shanty; had not resided on the land; had not broken 13 acres and cultivated 3 acres, as alleged in his final proofs, or any other portion of the land; and that the statement made in his affidavit that he had not alienated any part of the land was also false, as he had alienated, or agreed to alienate, it to the defendant Gilson (R. 4).

The bill further alleged that on November 21, 1902, the day on which he offered proof, the entryman executed a mortgage on the land to Gilson and on July 13, 1903, deeded him the land, all of which had been agreed upon between Landis and Gilson prior to the time of making proof (R. 5); that at all of the times mentioned the defendant Gilson knew of the false and fraudulent acts of the entryman and that the original entry was made not for the benefit of Landis but for Gilson's (R. 6).

The defendant answered the bill denying the allegations of fraud and, as an affirmative defense, set up that at the time of making proof the entryman was indebted to him in the sum of $640 actually loaned and advanced to Landis upon the latter's

promise to repay the same; that the records of the land office showing that Landis was entitled to a patent for the land upon the payment of the purchase price of $300, the defendant loaned him that sum, which was a part of the $640 in which Landis was indebted to the defendant, and that it was to secure that indebtedness that the mortgage was given (R. 17); that on July 13, 1903, believing that Landis was the actual owner of the land in fee, the mortgage being wholly unpaid and unsatisfied and Landis being indebted to him in the sum of $672, principal and interest, and the land-office records exhibiting all of the facts and proceedings, the defendant agreed with Landis for the purchase of said lands for the price of $672, whereupon he made the deed to the defendant in satisfaction of the indebtedness.

It was further alleged in the answer that the fair market value of the land at the time of defendant's purchase did not exceed $500 (although the defendant's jurisdictional affidavit (R. 113) avers that it is now worth not less than $5,000); that the mortgage was taken in good faith and defendant purchased the land in good faith, paying full value therefor, and in virtue of the premises became a bona fide purchaser for full value without any notice of any facts whereby the validity of the entry might be impeached (R. 18).

Testimony was taken by an examiner and, from the evidence submitted by both parties, the district court found the facts to be as follows:

> Gilson owned land adjacent to the tract which is the subject of this suit which he

wished to make use of for pasture, and with that object in view he induced Landis to locate and live in the vicinity to keep up his (Gilson's) fences. Not feeling able to pay a man's wages for the light labor of caring for fences, it was arranged for Landis to earn compensation by exercise of his homestead right. Gilson procured from a prior claimant a relinquishment and the right to appropriate a cabin which was then upon the land and which constituted the only habitation on the land then or since. The only other improvements on the land consist of about ten acres upon which the sagebrush has been grubbed, and about three acres which was ploughed once and planted to wheat, which never yielded a crop worth harvesting.

Landis filed his claim under section 2289 of the Revised Statutes of the United States in November, 1899, and commuted under section 2301, Revised Statutes, in November, 1902, and a patent was issued in July, 1903. The evidence on which the register and receiver allowed the commutation entry included sworn statements by Landis and two witnesses to the effect that the claimant had lived continuously on the land and made improvements, including a corral and chicken house, and that he had cultivated three acres three seasons. That was a false statement, there having been no ploughing or cultivation except during the third year. The land is dry sagebrush land and not productive without irrigation. The only return from the wheat which was planted on the three acres was

eaten by sheep owned by a firm named Jackson & Cameron.

Gilson furnished the meager supplies on which Landis subsisted during the period of his occupancy of the land, or gave him at different times money in pittances sufficient to buy necessaries, and also furnished the money paid to the Government for the land, including the land-office fees. On the same day that the commutation entry was made Landis gave a mortgage on the land to Gilson and he then ceased to live on the land. He also deeded the land to Gilson immediately after the patent was issued.

Section 2301, Revised Statutes, authorizes persons who have taken the benefits of section 2289 to pay the minimum price for the quantity of land so entered at any time after the expiration of fourteen calendar months from the date of such entry, and obtain a patent therefor upon making proof of settlement and of residence and cultivation for a period of fourteen months. This statute is to be construed in harmony with the policy of the public land laws allowing actual settlers, in good faith, the privilege of acquiring land in limited quantities for actual cultivation and use. Manifestly it is contemplated that a bona fide settler will, during a period of fourteen months, make such progress in the improvement of his claim as will tend to make it habitable and productive. A man old and infirm, as the evidence shows Landis to have been, could not be expected to do as much as one younger and stronger, and nonproductive sagebrush land

> could not be tilled profitably without irrigation. But after making due allowance for the conditions shown to exist, the conclusion is unavoidable that Landis made only a pretense of settlement and a show of improving the land merely to satisfy the scruples of the witnesses upon whom he depended to make final proof. If it had been his intention to make a home he would, instead of expending his labor in grubbing sagebrush, have provided a well; and instead of doing a thing so useless as to plant wheat, he would have made provisions for keeping chickens or to irrigate enough ground to supply him with necessary vegetables.
>
> The defendant Gilson was cognizant of every detail of the transaction at the different stages from the inception to the issuance of the patent, and, indeed, he instigated and directed the proceedings at every step, therefore he can not claim to be a bona fide purchaser from Landis (R. 97).

Gilson appealed to the Circuit Court of Appeals, where the decree of the lower court was affirmed, Circuit Judge Gilbert, who rendered the opinion, saying (185 Fed. 484):

> It is true there is no very specific testimony that an understanding between Landis and the appellant was had before the entry was made that the title was to be acquired for the latter. The appellant denied that there was any such understanding, and Landis was dead at the time when the testimony was taken, but there were circumstances and testimony clearly

pointing to that conclusion, and we can not say that they were insufficient to sustain the finding of the court below. Landis was past seventy years of age, was decrepit, and destitute. The appellant sought him out, took him to the land and pointed it out to him, induced him to settle on it, and negotiated and paid for the relinquishment of a prior settlement thereon. He paid the fees incident to the entry, and the fees when final proof was made. There is evidence that he was cognizant of the nature and extent of the improvements and cultivation made by Landis, and that he was aware of the untruth of the final proofs which were made of such settlement and cultivation. From the time of the entry Landis was engaged in doing light jobs of work for the appellant, whose house was but a quarter of a mile from the claim in question, but there was no agreement as to wages, and during the whole period of Landis's residence on the land the appellant furnished him groceries and supplies and small sums of money from time to time for his support, all without any security for repayment. There was evidence of statements made by Landis to others to the effect that he had entered the land to obtain the same for the appellant and not for himself. On the date of the commutation the appellant gave him $100, and he surrendered the possession. In view of all these facts, we find no error in the conclusion which the trial court reached, that the patent should be canceled, and it becomes unnecessary to consider the questions of law

suggested by the appellant, who urges that inasmuch as the final proof was not made under section 2291, but was made under section 2301 of the Revised Statutes, proof that the claimant had made an agreement before commutation to deed his land to another could not affect the validity of the title obtained from the United States, for the reason that section 2301 prescribes as requisite to commutation proof only, that the entryman has made settlement, cultivation, and residence for fourteen months, and does not require him to make oath that he has not alienated any portion of the land. (R., 108–109.)

THE QUESTIONS PRESENTED.

The questions presented are (1) the questions of fact, whether there was an agreement between Landis and the appellant that the land should be acquired by the former for the latter, and whether such agreement, if made, occurred before or after the original entry; (2) the question of law, whether such an agreement (obviously unlawful if made before the original entry) was also unlawful if made afterwards, but before the commutation proof was offered; (3) the question of fact, whether Landis's commutation proof concerning his cultivation and improvements was false; and (4) the question of fact, whether Gilson had notice of such false testimony before he purchased.

STATEMENT OF THE ARGUMENT.

I.

Both courts below having concurred in finding that there was an unlawful agreement between the entryman and the appellant whereby the former was to enter the land and procure title for the latter, that the testimony respecting cultivation and improvements was false, and that the appellant was on notice of the fraud before he purchased, the findings should not be disturbed unless manifestly erroneous.

II.

The findings were not erroneous.

(*a*) As a matter of law any agreement to alienate made by the entryman before commutation or final proof is unlawful; and no distinction is to be drawn between agreements made before and agreements made after the original entry but antedating that full compliance with the law which earns the title.

(*b*) The evidence fully justifies the conclusion that there was an unlawful agreement to alienate which preceded the original entry and persisted until the actual purchase by the appellant.

(*c*) The evidence proves clearly that the entryman offered false and fraudulent testimony concerning the extent of his cultivation and improvements.

(*d*) The evidence proves conclusively that the appellant knew what the improvements and cultivation actually were, and justifies the inference that he knew they were fraudulently exaggerated in the commutation proofs.

ARGUMENT.

I.

Both courts below having concurred in finding that there was an unlawful agreement between the entryman and the appellant whereby the former was to enter the land and procure title for the latter; that the testimony respecting cultivation and improvements was false; and that the appellant was given notice of the fraud before he purchased, the findings should not be disturbed unless manifestly erroneous.

It is unnecessary to elaborate this point as the rule is well settled in this court. *The Texas and Pacific Railway Co.* v. *Railroad Commission of Louisiana*, decided by this court February 24, 1914, No. 186, October term, 1913.

However, counsel for the appellant, while apparently conceding the rule, contend that it does not apply here, for the reason that the trial court did not hear the testimony, which was taken by an examiner, and therefore did not have an opportunity of observing the demeanor of the witnesses. We can not accede to this. In the case of the *Texas and Pacific Railway Co.* v. *The Railroad Commission of Louisiana, supra*, in which the rule was so recently and so clearly announced by this court, not only was the testimony not heard by the trial court but it was taken by a master whose report was set aside by the court on the ground that it was not supported by the evidence.

II.

The findings were not erroneous.

(*a*) *As a matter of law any agreement to alienate made by the entryman before commutation or final proof is unlawful; and no distinction is to be drawn between agreements made before and agreements made after the original entry but antedating that full compliance with the law which earns the title.*

The homestead law (R. S. 2289 et seq., as amended by the act of March 3, 1891, 26 Stat., 1098), requires any person applying for its benefits to make oath that—

> * * * such application is honestly and in good faith made for the purpose of actual settlement and cultivation, and not for the benefit of any other person, persons, or corporation, and that he or she will faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence, and cultivation necessary to acquire title to the land applied for; that he or she is not acting as agent of any person, corporation, or syndicate in making such entry, nor in collusion with any person, corporation, or syndicate, to give them the benefit of the land entered, or any part thereof, or the timber thereon; that he or she does not apply to enter the same for the purpose of speculation, but in good faith to obtain a home for himself, or herself, and that he or she has not directly or indirectly made, and will not make, any agreement or contract in any way or

> manner, with any person or persons, corporation, or syndicate, whatsoever, by which the title which he or she might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person, except himself or herself. (Sec. 2290.)

In making final proof the entryman is required to make "affidavit that no part of such land has been alienated, except as provided in section 2288," which permits alienation for certain enumerated purposes, none of which exists in this case (sec. 2291). While section 2301 has nothing to say as to alienation, its sole purpose was to give the entryman the option to acquire title after fourteen months by substituting payment of the minimum price of the land for a portion of the five-year period of residence and cultivation required by section 2291. The original purpose of the entryman must be the same in either case: The acquisition of a home for his own benefit; and that purpose must persist throughout the entire period of residence and cultivation, whether five years or fourteen months.

A case directly in point is that of *Bailey* v. *Sanders*, decided at the last term of this court (228 U. S., 603). The entryman in that case, after making the original entry, and some two or three months before the commutation proof, entered into an agreement with one Bailey whereby the latter was to pay the expense of the commutation and the entryman was to convey the land to Bailey for an additional consideration

when the commutation was filed. In that case, as in this, it was contended that the homestead law does not prohibit the entryman, in advance of commuting his entry, to sell his land; but the contention was held to be not sound, Mr. Justice Van Devanter, who rendered the opinion, saying that the only purpose of section 2301 was to give the entryman an option to substitute the minimum price of the land for a part of the five years of residence and cultivation otherwise required, and that in other respects the operation and application of sections 2290 and 2291 were not affected by it.

(*b*) *The evidence fully justifies the conclusion that there was an unlawful agreement to alienate, which preceded the original entry and persisted until the actual purchase by the appellant.*

The situation existing at the time of entry is shown by the appellant's testimony to be substantially as follows: Gilson lived near the land involved and needed some assistance in looking after his pastures. Not being able to pay a man's full wages, upon inquiry he sought out the old man Landis and made arrangements with him, suggesting that Landis "come up and do some work for me," saying that there was land there to be entered (R. 74–75). Gilson had known Landis only two or three days before the entry was made (R. 69). Landis had no money and appellant advanced it to pay the Government fees and other expenses without taking security (R. 71). He could not remember the amount. He also ad-

vanced the money to purchase the relinquishment of a former entryman (R. 93).

The appellant continued to furnish Landis money from time to time until the commutation proof was made when he advanced "something like $400" (R. 72). Appellant took Landis to town when the proof was made and the land was mortgaged that same day to appellant, who had "already arranged to get the money that day, provided the proof was all right"—that mortgage secured *all* the money that appellant had advanced to the entryman (R. 73), and it had been arranged a month or two before proof was made (R. 74, 93).

Counsel for appellant would make it appear that the only evidence offered to show the agreement between Landis and Gilson consisted of the testimony of three of the Government's witnesses mentioned on pages 16 to 23 of their brief. Counsel designate the statements of these witnesses as "unnatural in their nature, meager and rambling" and urge that they are not sufficient to overcome the positive denial under oath of the appellant Gilson.

We contend, however, that the testimony elicited from the appellant himself on cross-examination constitutes strong evidence of an agreement between him and the entryman. When it is remembered that the appellant took up this old man Landis whom he had never seen before and of whom he knew nothing, located him on vacant public land adjacent to appellant's home, advancing all the money necessary to make the homestead entry and furnishing other sums

from time to time, it requires no stretch of the imagination to reach the conclusion that from the inception of the proceedings it was his definite purpose to use the old man to acquire title to the land. This conclusion finds ample support in the testimony of several of the Government's witnesses, which we submit is neither meager nor rambling.

Witness C. A. Bryant testified positively that in a conversation with Gilson in March, 1902, the latter stated that he owned the building on the land and was going to get the land (R., 34).

D. T. Meyers related a conversation had with the entryman Landis prior to the offer of proof, in which the latter said that he had filed a homestead right for Mr. Gilson, who was to give him (Landis) $100; in another conversation after proof was made, Landis said that he had received his $100 from Gilson. He made the same statement to witness several times afterwards, that Gilson was furnishing all expenses, paying everything, and Landis was to get $100 for his homestead right (R., 36). This witness was positive as to the first conversation had with Landis after the latter had made proof, because he was unusually well-dressed and "looked better than common," upon which the witness made the remark "You are looking pretty good to-day," and Landis answered, "Yes; I just got my money out of Gilson" (R., 38).

Witness R. A. Grant testified to a conversation with the entryman in which the latter said that he

had an arrangement with Gilson to take up the land; that Gilson was to supply him with a little money for work to be done on Gilson's land. (R., 41.)

Witness Joseph H. Lancaster, who knew Gilson well (R., 68), testified to a conversation with the latter in 1904, during which Gilson stated that if Lancaster would make an entry such an arrangement could be made as had been made with Landis; that he, Gilson, would do the same with Lancaster as he had done with Landis; that under the homestead law every man that had a homestead could mortgage his place to prove up on it (R., 45); and that he, Gilson, would furnish the money to prove up and give $150 or $200, the same as he had done with Landis.

This testimony, when considered in connection with the appellant's admissions, leaves little room for doubt that the entry was made under a prior agreement.

As evidence that there was no prior agreement for the making of this entry and its commutation, counsel for appellant invite attention to the fact that while the original entry was made November 13, 1899, the commutation proof was not offered until November 22, 1902, three years thereafter, and urge that if the parties had intended to acquire title in violation of the law, the offer of commutation would not have been so long delayed. This argument proves nothing. In answer we might suggest that Landis was an old man, weak both physically and mentally. It might have been the original purpose

to make a five-year proof, which was frustrated by the entryman's weakened condition. This suggestion finds support in the fact that there was no cultivation of the land whatever until commutation proof was offered or shortly thereafter.

(c) *The evidence proves conclusively that the entryman offered false and fraudulent testimony concerning the extent of his cultivation and improvements.*

Witness Bryant, for the Government, testified that the only improvements upon the land in the spring of the year 1902 was a rough shack about 12 by 16 feet and between five and eight acres of land from which the sagebrush had been grubbed, and that there were no wagons, tools, or farming implements of any kind upon the place (R. 24); that none of the land had been broken at that time and no crop had been planted. (R. 25.)

Witness Fred Seymour said that he had passed the place a number of times and had seen no one living there, nor had he seen anything around the house in the way of tools or improvements to indicate that anybody lived there (R., 26); that if anybody had been living on the land he would have known it (R., 27); that both Landis and Gilson approached him before proof was made to get him to act as a witness, and when he asked whether the necessary farming had been done and improvements made, Gilson replied that the ploughing had not been done but it would be before proof was offered (R., 27).

I. S. Brooks, clearly an unwilling witness for the Government, testified that Landis lived with him one winter before making proof (R., 29); that Gilson went to Brooks's place and got Landis, then went up to the homestead, staying a day or two, and after that witness went there and they were ploughing and wheat was sown *after* they proved up (R., 30).

Witness Lancaster testified that there had been no ploughing or cultivation until the year 1903, when perhaps three acres were planted in wheat (R., 43); that the only improvements on the land consisted of a small house worth about $25 or $30 (R., 45). This witness, who kept a diary, was positive that no ploughing had been done when he was on the land in January, 1903 (R., 48).

In the final proof both witnesses for the entryman testified that the improvements consisted of a house, about three acres fenced, 13 acres cleared, a chicken house, corrals, and so forth, valued at $250, and that three acres had been cultivated for three seasons (R., 59–61). From the testimony of the witnesses mentioned above, it is clear that the improvements were worth nothing like $250. There was no fencing whatever, no buildings except a small shanty, and no part of the land had been cultivated for three seasons. Three acres planted in wheat were not even ploughed until just before proof was made, if, indeed, they were ploughed at any time prior to January, 1903. According to the testimony of witness Brooks the planting was done *after proof* was made.

To earn title under the homestead law the entryman must *reside upon and cultivate* the land for the specified period. The performance of one of these requirements is not sufficient (*United States* v. *Mills*, 190 Fed. 513). In this case there was little, if any, residence and substantially no cultivation—certainly not enough to justify the belief that the entryman ever intended to establish a home in good faith.

(*d*) *The evidence proves conclusively that the appellant knew what the improvements and cultivation actually were and justifies the inference that he knew they were fraudulently exaggerated in the commutation proof.*

The appellant admitted that he talked to the parties who were to act as proof witnesses.

> I talked with them to find out if the proof would be all right or not and they could testify enough to make a substantial proof of it.
>
> Q. Well, now, did you know what the improvements were on the land at the time you talked with these parties?
>
> A. Yes, sir. (R., 67.)

He further admitted that he had done the ploughing on the land (R. 75), and that Landis had no farming implements "to amount to anything" (R. 80). He lived in sight of the place (R. 77), delivered groceries to Landis (R. 83), and saw him the day proof was made. They probably went to town together (R., 69–73).

Witness Seymour for the Government testified that he was approached by both Gilson and Landis and asked to act as one of the proof witnesses, but,

as witness had recently passed the place and seen no "farming done," he asked whether the necessary work had been performed, to which Gilson replied that "the ploughing was not done" and that it would be before the time expired (R., 27). This was not long before proof was made, and the appellant, who admitted that he had done the ploughing, necessarily knew that there had been no cultivation.

The entire evidence shows that the appellant was thoroughly familiar with every detail of the matter from the making of the entry to the offering of the proof. He caused the entry to be made, furnishing the money to buy out a prior settler. He assisted in procuring the proof witnesses and was in town when they testified. He advanced the money to pay all expenses, including the price of the land, and, having such interest in the outcome, there can be little doubt that he knew what the testimony was and how grossly it misrepresented the true situation.

CONCLUSION.

We submit that the action of the lower courts should be affirmed.

ERNEST KNAEBEL,
Assistant Attorney General.

S. W. WILLIAMS,
Attorney, Department of Justice.

MAY, 1914.

○

GILSON *v.* UNITED STATES.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

No. 207. Submitted May 6, 1914.—Decided June 8, 1914.

The settled rule of this court that the concurring findings of two courts below will not be disturbed, unless shown to be clearly erroneous, applies where the evidence is taken before an examiner. *Texas & Pacific Railway Co.* v. *Louisiana Railroad Commission*, 232 U. S. 338.

Quære, as to what is the effect on a commuted homestead entry under § 2301, Rev. Stat., of an agreement for alienation made after entry and before commutation; and see *Bailey* v. *Sanders*, 228 U. S. 603. 185 Fed. Rep. 484, affirmed.

THE facts, which involve the validity of a patent of the United States for a tract of land issued under a homestead entry, are stated in the opinion.

Mr. Wade H. Ellis, Mr. Ira P. Englehart, Mr. Allen S. Davis and *Mr. George B. Holden* for appellant:

The evidence having all been taken before a special master, the rule that appellate courts will give great weight to findings of trial courts on questions of fact does not apply.

After Landis had made his homestead filing, he had a right to make an agreement to sell the land and then commute his entry and purchase the land. He did not make final proof under the homestead statute, but purchased the land under § 2301 of Revised Statutes. *Adams* v. *Church*, 193 U. S. 510; *Williamson* v. *United States*, 207 U. S. 425.

The evidence is insufficient to justify the conclusion that there was any agreement between Landis and Gilson before Landis filed on the land that Landis was to sell the land to Gilson. Even though Landis was guilty of fraud, there is insufficient evidence that Gilson was a party thereto to authorize cancellation of patent after title thereto has vested in him.

Mr. Assistant Attorney General Knaebel and *Mr. S. W. Williams* for the United States.

MR. JUSTICE PITNEY delivered the opinion of the court.

This is an equity action brought by the United States against appellant to cancel a patent issued to one Daniel

Landis for a tract of one hundred and twenty acres of land in Yakima County, in the State of Washington, afterwards conveyed by Landis to appellant. Landis made a homestead entry in November, 1899, under § 2289 of the Revised Statutes as amended by act of March 3, 1891, c. 561, 26 Stat. 1095, 1098; in November, 1902, he commuted the entry and purchased the land under § 2301 as amended by the same act; and in July, 1903, he received a patent. Upon the day on which he made the commutation entry he gave a mortgage upon the land to appellant, and from that date ceased to live upon it, and as soon as the patent was issued he made the conveyance to appellant. The grounds of the action were: that Landis did not enter the land in good faith, but for the purpose and with the intent of acquiring title to it for appellant and at his instigation; that the residence and improvements were not sufficient; that the affidavit upon which Landis' original application was allowed was false and fraudulent, in that he did not make the application in good faith for the purpose of actual settlement and cultivation, but made it for the benefit of appellant, with whom the entryman was then acting in collusion for the purpose of giving to appellant the benefit of the entry; that the proof of settlement and cultivation offered in support of the commutation entry was false and fraudulent, in that the entryman had not made settlement in November, 1899, or at any other time, had not built a house, except a partially completed shanty, had not resided on the land, and had not broken thirteen acres and cultivated three acres as alleged in his final proofs; and that the statement made in his affidavit that he had not alienated any part of the land was also false, in that he had alienated or agreed to alienate it to appellant.

The trial court found that Landis made the homestead entry at appellant's instigation and for his benefit; that the evidence on which the register and receiver allowed

the commutation entry included sworn statements by Landis and two witnesses to the effect that the claimant had lived continuously on the land and made improvements, including a corral and chicken house, and that he had cultivated three acres for three seasons; that this was a false statement, there having been no plowing or cultivation except during the third year; that the land was dry sage-brush land, not productive without irrigation; that Landis made only a pretence of settlement and a show of improving the land, in order to satisfy the scruples of the witnesses upon whom he depended to make final proof; and further, that appellant was cognizant of every detail of the transaction from its inception to the issuance of patent, and, indeed, directed the proceedings at every step, and therefore could not claim to be a *bona fide* purchaser.

The Circuit Court of Appeals concurred in this view of the facts, and therefore sustained the conclusion reached by the trial court that the patent should be canceled, without finding it necessary to consider the question of law, suggested by appellant, that inasmuch as final proof was not made under § 2291 but under § 2301 of the Revised Statutes, the fact that the claimant had made an agreement before commutation to convey the land to another would not affect the validity of the title obtained from the United States, because § 2301 prescribes as requisite to commutation, proof only that the entryman has made settlement, cultivation, and residence for fourteen months, and does not require him to make oath that he has not alienated any portion of the land. The decree was affirmed (185 Fed. Rep. 484), and the present appeal was taken.

Upon the question of fact as to the fraudulent nature of the proof upon which the commutation entry was allowed, we have the concurring findings of two courts, which, according to the settled rule, will not be disturbed by this court unless clearly shown to be erroneous. *Stuart*

v. *Hayden*, 169 U. S. 1, 14; *Towson* v. *Moore*, 173 U. S. 17, 24; *Dun* v. *Lumbermen's Credit Assoc.*, 209 U. S. 20, 23; *Washington Securities Co.* v. *United States*, *ante*, p. 76.

In behalf of appellant it is urged that this rule does not apply where the evidence is taken before an examiner, as was done in this case. The rule, however, is subject to no such exception; indeed, prior to the adoption of the new Equity Rules (226 U. S., Appendix, Rule 46), the evidence in equity actions was usually taken before a master or examiner. And in *Texas & Pacific Ry.* v. *Louisiana Railroad Commission*, 232 U. S. 338, where the findings of the special master who heard the testimony were set aside by the Circuit Court, and the conclusions of that court were concurred in by the Circuit Court of Appeals, we deemed the case a proper one for applying the general rule.

In the present case, not only does the argument submitted in behalf of appellant fail to show clear ground for disturbing the concurring findings of the two courts, but it raises no reasonable doubt of their correctness.

This renders it unnecessary to deal with the question raised as to the effect of an agreement for alienation made after entry and before commutation. However, it is settled adversely to the contention of appellant by our recent decision in *Bailey* v. *Sanders*, 228 U. S. 603, 608.

Decree affirmed.